E-FILED
Rachel Dombrowski, Clerk
Appellate Court of Maryland
11/12/2024 4:19 PM

I would please ask that the custodian carefully consider the balance and advantage of transparency of full release of all information (except the actual data itself). The records of the Washington County Sheriff and/or other County governmental units contain sensitive and potential private data about certain residents, persons and their businesses that could be used by bad actors to gain access to their data and/or impersonate them. The taxpayers of this County have invested millions of dollars in our network and computer systems and we need to know our hard earned tax money is secure and going to the needs of the citizens of this County. The Ransomware and cyber security incident happened 3 weeks prior and the County has not updated its citizens on the extent of the nature of the breach, nor the County's efforts to repair the Network.

To the extent the COunty has declined the assistance and/or help of the US GOVERNMENT in recovering the data and money; the citizens of this County must be informed why that policy is useful to them.

I have been requesting the County's email retention and data backup policies for over 1 year out of great concern that in fact the Counties tendency to lose records and data would and now is, potentially is a systemic problem affecting the taxpayer resources of Washington County. This concern is greatly amplified by the public record thus far which reflects a County that is unwilling or unable to produce any formal written policy on data retention, cloud backup or cyber security.

Thank you in advance for all the hard work the County and its custodian does for our wonderful County and residents.

Respectfully,

Justin Holder

McCarty, Rachael

From: Bright, Andrew
Sent: Friday, May 29, 2020 12:07 PM
To: McCarty, Rachael
Subject: Fw: Justin Holder PIA requests

From: Bright, Andrew
Sent: Wednesday, May 6, 2020 12:49 PM
To: adam@greivelllawoffice.com <adam@greivelllawoffice.com>
Cc: Downey, Kirk <kdowney@washco-md.net>; McCarty, Rachael <rmccarty@washco-md.net>
Subject: Justin Holder PIA requests

Dear Adam

Our office has recently received three requests from Justin Holder pursuant to the Maryland Public Information Act, MD. Code, Gen'l Prov. Art. §§4–101 et seq. ("PIA"). Our office has requested appropriate county personnel to identify the records, but as you pointed out in your email, we have not yet acknowledged his request, which I will do here. I apologize for the delay in doing so.

As I understand them, Mr. Holder's requests are as follows:

On April 17, Mr. Holder requested the following:

"Keedysville water

1. Oct 6th, 1958 agreement,charter, ordinance, or code in which keedysville installed water in town. It is going to be the keedysville boonsboro water board that was formed.

2. Any demand or release letters sent to residents in order to hook up or be excluded, as well as easements filed.

3. Minutes and notes from all public hearings and meetings where water installation in 1958bwas discussed.

4. A list of all improved real estate in town that does not have water connection as of this date.

Washington county sewer

1. The ordinance, charter and agreement created by the Washington county sanitary district when forced main sewer was installed in keedysville and sharpsburg in 1988.

2. All demand letters sent, release letters collected, all sewer grinder pump location sheets filed, and all easements created in the process of installing sewer in keedysville and sharpsburg in the late 1980s.

3. A list of all customers that were connected to water within 2 years of being connected to sewer in the late 1980s in the town of keedysville. How much it cost, and who paid the bill. Specifically these addresses:
82 south main st Henrietta Rutledge

96 north main street mary kefauver
35 my hebron road jamie burtner
16 antietam drive david griffith
7,9,11 my vernon lane swope, kerns, taylor
6603 Coffman farms rd della long
57 s main st Chester wyandotte
As well as any other homes who were connected to water from 1985 to 1990 in keedysville."

On April 18, Mr. Holder requested "a current map of all county roads. If mt hebron road and felfoot drive from 34 to mt hebron have been closed or returned to felfoot, please provide the conveyance and agreement under which that was transacted."

On April 30, Mr. Holder requested: "the specific spec sheet on the equipment we are buying from Mark, or waterquality, or the law, ordinance, or policy from which we are to specify equipment." This request appeared to relate to a sewage grinder pump and controls.

The County is in the process of searching and reviewing records which may be responsive to your client's requests, and identifying any records which may be privileged or otherwise not subject to inspection. Because of the scope and volume of his requests, and the challenges of operations during the COVID-19 situation, I anticipate that it may take as long as 30 days to produce the records he has requested.

At this point, it appears that the County has no records in its possession which are responsive to to the five requests regarding "Keedysville Water" or water service. It is possible that such records would be in the possession of the Mayor and Council of Keedysville, the Keedysville Water Commission, or the Boonsboro Keedysville Water Advisory Board.

As you are aware, there is no charge for the first two hours of employee time for responding to a PIA. Time after that is billed at the rate of $15 per hour. I would estimate that retrieval, review, redaction (if necessary) and production of the requested documents will cost approximately $375.00. This is mostly attributable to request number 2 under "Washington County Sewer." If Mr. Holder wishes to modify his request in any way in light of the volume of records involved, please let me know.

Please do not hesitate to contact me if you have any questions or concerns regarding the processing of your client's request, and thank you for your patience in this matter.

Andy Bright

B. Andrew Bright
Assistant County Attorney
Washington County Administration Complex
100 West Washington Street, Suite 1101
Hagerstown, MD 21740
P: (240) 313-2230 | F: 240-313-2231
www.washco-md.net

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Docket: 6/15/2023 4:50 PM; Submission: 6/15/2023 4:50 PM
Envelope: 13069961

Kirk C. Downey
County Attorney

Washington County
MARYLAND

Kendall A. McPeak
Deputy County Attorney

B. Andrew Bright
Assistant County Attorney

OFFICE OF THE COUNTY ATTORNEY

May 28, 2020

Re: Justin Holder
Public Information Act Requests dated 5/22/2020

Adam D. Greivell, Esq.
Greivell & Garrott Johnson, LLC
5 Cornell Avenue
Hagerstown, MD 21742

Dear Mr. Greivell:

Our office received an email dated May 22, 2020 from your client, Justin Holder, requesting records pursuant to the Maryland Public Information Act, MD. Code, Gen'l Prov. Art. §§4–101 et seq. ("PIA"). His requests are set forth below.

> **"1. All loan applications, grant applications, bond agreements, ordinances, mandates, laws, agreements related to the 1885 to 1991 installation of forced main sewer in sharpsburg md and keedysville md.**
>
> **"2. Phone records for Jeremy mose, mark Bradshaw, ken Lord, barry levey, matt hull, Karen flook jeff cline,, Terry baker for the last year. All email correspondence from the above named respondants from Dec 1st 2019 until may 22nd, 2020.**
>
> **"3. I want the minutes or Jeremy Mose's conversation notes, letters, call transcript. Or email in response to mayor of keedysville ken lord request for assistance on the antietam dr keedysville sewer extension."**

The County is in the process of searching and reviewing records which may be responsive to your request and is identifying records which may be privileged or otherwise not subject to inspection. Because of the scope and volume of the requests, I anticipate that it may take as long as 30 days to produce the records you have requested.

Mr. Holder's request item 1 is very broad as written. However, the Department of Environmental Management (DEM) has identified a large group of project records from the Washington County Sanitary District from the 1980s which are responsive to your client's request. It is estimated that there are over 5,000 pages of records which are either applications and agreements, or project documents which were attachments to the same. The cost of reproducing the records is estimated at $1,300.00. If you and your client would prefer, you and he are welcome to inspect the project documents at the Department of Water Quality on Elliott Parkway and identify any documents which you would like to have copied. We would need a day or two advance notice so that a conference room can be reserved for you.

Mr. Holder's request item 2 is extremely broad as written. The Director of Information Systems has determined that, as written, a search of all email for the County staff/officials given, with no limiting search parameters other than the date range specified, resulted in 47,063 emails. Such a list of emails would require review by the County Attorney's office to determine which emails or portions of emails are privileged or otherwise shielded from production. The cost of review and duplication of the emails which are not exempt from production is estimated at $8,500.00. We presume that the real impetus of your client's request is to obtain records of communications related to sewer connection at 25 or 28 Antietam Drive in Keedysville, Maryland. Please let us know whether the request can be narrowed to that extent.

I hope that you will confer with Mr. Holder and advise accordingly.

Sincerely,

B. Andrew Bright
Assistant County Attorney

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Docket: 6/15/2023 4:50 PM; Submission: 6/15/2023 4:50 PM
Envelope: 13069961

McCarty, Rachael

From: Downey, Kirk
Sent: Monday, June 1, 2020 10:11 AM
To: Bright, Andrew; McCarty, Rachael
Subject: FW: Public information request

From: Justin Holder <jholder2004@gmail.com>
Sent: Sunday, May 31, 2020 2:19 PM
To: Downey, Kirk <kdowney@washco-md.net>
Subject: Re: Public information request

WARNING!! This message originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Any claims of being a County official or employee should be disregarded.

Mr. Downey,

I no longer have interest in item #1 or #2 in the email below.

Please provide the information in #3 as soon as possible.

Thanks,
Justin

On Fri, May 22, 2020, 12:10 PM Justin Holder <jholder2004@gmail.com> wrote:

> Mr. Downey,
> I am once again writing to request documents from the Washington County water quality, previously Washington County sanitary district. Please respond back in 10 business days acknowledging the request, time it will take to process and cost.
>
> I am writing to request the following documents:
> 1. All loan applications, grant applications, bond agreements, ordinances, mandates, laws, agreements related to the 1885 to 1991 installation of forced main sewer in sharpsburg md and keedysville md.
>
> 2. Phone records for Jeremy mose, mark Bradshaw, ken Lord, barry levey, matt hull, Karen flook jeff cline,, Terry baker for the last year. All email correspondence from the above named respondants from Dec 1st 2019 until may 22nd, 2020.
>
> 3. I want the minutes or Jeremy Mose's conversation notes, letters, call transcript. Or email in response to mayor of keedysville ken lord request for assistance on the antietam dr keedysville sewer extension.
>
> Also please be advised I intend to file suit and under local government tort reform, I request you preserve all evidence, documents, and materials. I am writing under Md. Code Cts. & Jud. Proc. Ss5 -304 and providing notice within the year. Would you prefer this notice be by mail or in person? I can stop in and make the request or we can agree to electronically consider this notice.

Thank you,

Justin Holder

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Kirk C. Downey
County Attorney

Kendall A. Desaulniers
Deputy County Attorney

Washington County MARYLAND

OFFICE OF THE COUNTY ATTORNEY

September 3, 2021

Re: Public Information Act Request
Keedysville Intergovernmental Agreement

jholder2004@gmail.com
Justin Holder
308 West Chapline Street
Sharpsburg, MD 21782

Dear Mr. Holder:

This correspondence serves as a re-iteration of prior responses to you concerning your Public Information Act request for any intergovernmental agreement between the Town of Keedysville, the former Washington County Sanitary District, and/or the Board of County Commissioners for Washington County concerning the provision of sewer service in the town limits of Keedysville. The County has conducted a search of records maintained by the Department of Water Quality, the Division of Environmental Management, and historical records in its possession from the now-defunct Sanitary District. The County also searched the records of the County Attorney's Office and minutes of the Sanitary District and the Board of County Commissioners. The County has been unable to identify any responsive comprehensive intergovernmental agreement concerning the construction, operation, and maintenance of sewer service in the Town of Keedysville.

In the course of our review for records that may have been responsive to your request, we came across the attached minutes and resolution concerning the adjustment of boundaries and service limits in Keedysville. There are, of course, other minutes and documents that mention Keedysville, the Sanitary District, and the provision of water and sewer service in Keedysville, but those documents do not appear responsive to your request for a comprehensive intergovernmental agreement concerning the construction, operation, and maintenance of sewer service in the Town of Keedysville. As you know, the County is the successor to the Washington County Sanitary District and took the assets and liabilities of the District in the mid-1990s pursuant to legislation approved by the General Assembly.

Sincerely,

Kirk C. Downey
County Attorney

KCD/rmm
cc (via email): Lisa Kershner, Public Access Ombudsman

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KEVIN KARPINSKI *
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DANIEL M. SCAPARDINE
JASON C. PARKINS
OLIVIA CARRARA*

* Admitted in MD and DC

DANIEL KARP
MICHAEL B. RYND
OF COUNSEL

RICHARD T. COLARESI
RETIRED

March 2, 2023

via email Jholder2004@gmail.com only
Justin Holder
308 West Chapline Street
Sharpsburg, Maryland 21782

RE: 342-102
PIA Request to Washington County regarding Communications related to the Destruction of Permanent Records

Dear Justin:

This correspondence is in response to the request for records you made pursuant to the Maryland Public Information Act ("PIA"), Maryland Code, General Provisions Article ("GP") § 4-101, *et seq.* to Washington County (the "County") on February 15, 2023 in which you requested the following:

> [A]ny and all:
>
> investigative records, employee reprimands, policy and procedural remedial measures take and/or notices sent to the Md. Dept of General services;
>
> relating to the destruction of "Permanent Records" as described *supra* and in attached ***Holder 021523 re Destruction of Permanent Records.pdf;*** specifically in reference to the destruction of the 1988-1991 agreement(s) between "Washington County and sub division/town for water and sewerage services."

By way of background, you previously requested similar materials in your PIA request to the County, dated January 20, 2023. The County responded on

February 15, 2023, indicating that it is not in possession of any such documents. As indicated in my February 15, 2023 correspondence, the County reviewed its records and no responsive documents exist.

Moreover, as also indicated in my previous correspondence, the County is not in possession of any "agreement between 'Washington County and sub division/town for water and sewerage services[,]'" which relates to your previous request(s) and is peripherally related to the instant request.

You may refer any concerns about this correspondence to the Public Access Ombudsman pursuant to GP § 4-1B-01 *et seq*. Additionally, do not hesitate to contact my office in the event you wish to clarify the scope of your request.

Sincerely,

KARPINSKI, CORNBROOKS & KARP, P.A.

/s/

By: Kevin Karpinski

KK:jp

cc: Kirk C. Downey, Esquire (kdowney@washco-md.net)
Kendall A. Desaulniers, Esquire (kdesaulniers@washco-md.net)
Kimberly Jacobson (kjacobson@washco-md.net)

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* Admitted in MD and DC

DANIEL KARP
MICHAEL B. RYND
OF COUNSEL
RICHARD T. COLARESI
RETIRED

March 31, 2023

via email Jholder2004@gmail.com only
Justin Holder
308 West Chapline Street
Sharpsburg, Maryland 21782

RE: 342-102
PIA Request regarding Amendment of Washington County Retention Schedules

Dear Justin:

This correspondence is in response to the request for records you made pursuant to the Maryland Public Information Act ("PIA"), Maryland Code, General Provisions Article ("GP") § 4-101, *et seq.* to Washington County (the "County") on March 2, 2023 in which you requested the following:

> Any and all amendments provided to the Md. Dept of General services of county records retention scheduled C882 or C1068 (previously C772).

As you have acknowledged, this request relates to your previous request in which you sought the following:

> [A]ny and all:
> investigative records, employee reprimands, policy and procedural remedial measures take and/or notices sent to the Md. Dept of General services;
>
> relating to the destruction of "Permanent Records" as described *supra* and in attached ***Holder 021523 re Destruction of***

> ***Permanent Records.pdf;*** specifically in reference to the destruction of the 1988-1991 agreement(s) between "Washington County and sub division/town for water and sewerage services."

The County reviewed its files and is not in possession of any records responsive to your request. Although you are likely aware at this point, any revisions to the retention schedules should be available at the following URL:

http://guide.msa.maryland.gov/pages/series.aspx?action=viewdetailedseries&id=se53

You may refer any concerns about this correspondence to the Public Access Ombudsman pursuant to GP § 4-1B-01 *et seq.* Additionally, do not hesitate to contact my office in the event you wish to clarify the scope of your request.

Sincerely,

KARPINSKI, CORNBROOKS & KARP, P.A.

By: Kevin Karpinski

KK:jp

cc: Kirk C. Downey, Esquire (kdowney@washco-md.net)
Kendall A. Desaulniers, Esquire (kdesaulniers@washco-md.net)
Kimberly Jacobson (kjacobson@washco-md.net)

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DANIEL KARP
MICHAEL B. RYND
OF COUNSEL
RICHARD T. COLARESI
RETIRED

April 6, 2023

via email Jholder2004@gmail.com only
Justin Holder
308 West Chapline Street
Sharpsburg, Maryland 21782

RE: 342-102
PIA Request regarding "Washington County Sewer Agreements – OTHER SUBDISTRICTS"

Dear Justin:

This correspondence is in response to the request for records you made pursuant to the Maryland Public Information Act ("PIA"), Maryland Code, General Provisions Article ("GP") § 4-101, *et seq.* to Washington County (the "County") on March 24, 2023 in which you requested to inspect, photograph or copy:

> The 'agreements' to operate, construct and maintain a sewer/water system made between the Washington County Government and/or Washington County Sanitary District and municipalities/political bodies representing:
>
> Subdistrict 1 Halfway;
> Subdistrict 2 Conococheague;
> Subdistrict 3 Hunter Hill Estates;
> Subdistrict 5 Potomac;
> Subdistrict 5-1 Cloverton/Greenlawn;
> Subdistrict 6 Fountainhead;
> Subdistrict 7 Mt. Aetna;
> Subdistrict 9 Highfield/Cascade;
> Subdistrict 12 Rolling Hills;
> Subdistrict 14 Sharpsburg Pike;

Subdistrict 15 Maugansville/Orchard Hills;
Subdistrict 15-1 Martins Crossroads/Cearfoss;
Subdistrict 16 Saint James;
Subdistrict 18 Conococheague; and
Subdistrict 19-1 Sandy Hook

Signed and sealed on or before December 31, 1993.

Responsive records, if any, are maintained by the County in boxes labeled with the names of former projects. The County is in possession of boxes relating to fifteen such projects. The County estimates that it will take two County employees 2.5 hours search through the boxes for each project and locate the potentially responsive records you requested. The combined hourly rate of those two employees is $104.15 an hour. Thus, the County estimates that it will cost approximately $520.75 to search for each project. Because there are fifteen projects in total, the County estimates that it will cost $7,811.25 to search for, identify, and retrieve the records you requested. Because the first two hours of search time under the PIA are free, the total estimate for the County's search for and retrieval of those records is $7,602.95, *i.e.*, $7,811.25 – (104.15 x 2).

The County is permitted to request a deposit to pay for the search retrieval and review of said records. Accordingly, the County requests that you submit a deposit of $7,602.95 to pay for the costs associated with the County's search and retrieval efforts, as outlined above. This amount does not include any legal review of said documents to determine whether the contain information exempt from disclosure under the PIA. At this point, the estimated deposit is not concrete and the cost of fulfilling your request may be less than or exceed that amount. If the cost is less than the estimated deposit, any unused funds will be returned to you. If the cost exceeds your deposit, the County may require you to submit additional funds to proceed with your request and to provide you with the responsive records. Please let me know if you intend to submit a deposit and to proceed with your request.

Additionally, based on the amount of time the County employee's search and retrieval efforts will take, the County estimates that it will take approximately forty-five days to complete the search for the responsive records.

In the alternative, you are free to narrow the scope of your request. If you choose to do so, the County will make another determination of whether you will be required to pay a deposit at that time.

You may refer any concerns about this correspondence to the Public Access Ombudsman pursuant to GP § 4-1B-01 *et seq.* Additionally, do not hesitate to contact my office in the event you wish to narrow the scope of your request.

Sincerely,

KARPINSKI, CORNBROOKS & KARP, P.A.

By: Kevin Karpinski

KK:jp

cc: Kirk C. Downey, Esquire (kdowney@washco-md.net)
Kendall A. Desaulniers, Esquire (kdesaulniers@washco-md.net)
Kimberly Jacobson (kjacobson@washco-md.net)

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MICHAEL B. RYND
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RICHARD T. COLARESI
RETIRED

April 24, 2023

via email Jholder2004@gmail.com only
Justin Holder
308 West Chapline Street
Sharpsburg, Maryland 21782

RE: 342-102
PIA Request regarding "Washington County Sewer Agreements – OTHER SUBDISTRICTS"

Dear Justin:

This serves as a response to correspondence sent to Washington County (the "County") on April 6, 2023 concerning the previous request submitted pursuant to the Maryland Public Information Act ("PIA"), Maryland Code, General Provisions Article ("GP") § 4-101, *et seq.*

By way of background, in your initial request, you sought any and all agreements between the County or the former Washington County Sanitary District between any municipalities representing certain subdistricts. The County responded to your request on April 6, 2023, indicating that any records potentially responsive to your previous request would likely be contained in fifteen boxes labeled with the names of former projects. The County then requested that you pay an estimated deposit of $7,602.95, excluding the first two hours of search time, which are free under the PIA. You declined to pay the deposit requested by the County and, instead, submitted the instant request on the same day the County responded.

In the present request, you seek one of two things: (1) a waiver of the fee associated with your previous request; or (2) to visit the County and inspect the records yourself. You also represented that you estimate you could search all the records in two (2) hours or less and indicated that you previously searched

"the mere possibility that information may aid an individual in the pursuit of litigation does not give rise to a public interest." The Honorable Marna McLendon, 81 Md. Op. Atty. Gen. 154 (1996) (citing *Massey v. FBI*, 3 F.3d 620, 625 (2d Cir. 1993).

The County reviewed your request for a fee waiver in consideration of the above referenced factors. The County notes that you are likely able to pay for the records given your past and present litigative interactions with the County and that the time and financial burden on the County associated with the search will be immense. With respect to the potential importance of public disclosure of these records, it is apparent that the approximately thirty (30) to forty (40) year-old documents from the defunct Sanitary District concerning sewage systems do not provide a great deal of insight into the County's operations and do not relate to any form of controversial matter that is within the public interest. Further, based on the notices of tort claims you submitted to the County, it appears as if you seek these documents to further some litigative desire against the County, which would expressly implicate a private, rather than public, interest. As noted by the Attorney General, your desire to potentially litigate matters relating to these records does not mean that your request implicates the public interest. Given the above analysis, granting your request for a fee waiver is not in the public interest and, therefore, your request for a fee waiver is denied.

With respect to your alternative request, *i.e.*, that you be entitled to review the records yourself, the contents of the boxes are not entirely certain at this point and may contain certain information, including personally identifiable and financial information, which may be exempt from disclosure under the PIA. Thus, to permit you to review those records, the County would be required to have County staff review those records and remove or redact any such materials, prior to you conducting a search. Therefore, if the County permitted you to do so, it would still require a significant expenditure of time and effort on behalf of County staff, which was accounted for in the County's previous request that you submit a deposit. I note that, when you previously searched the SD 4-1 box in 2021, an associate from the County Attorney's office did exactly that. Additionally, the County would be required to have an employee monitor you throughout the duration of your search, which would result in additional time and cost to the County. For those reasons, the County is denying your request to personally inspect the records, absent you agreeing to pay a portion of the deposit previously requested by the County, which could potentially cover the costs associated with pre-screening those records.

I also note that many of the "agreements" contained in the boxes related

a box labeled SD 4-1 on January 6, 2021. By way of reminder, the County informed me that it took you a substantial number of hours to search SD 4-1 two years ago, so the representation that you could search all fifteen boxes in two hours appears to be doubtful at this juncture.

With respect to requests for fee waivers under the PIA, pursuant to § 4-206(e), a custodian of records is entitled to waive a fee if requested by an applicant, the applicant is indigent and files an affidavit of indigency or "after consideration of the ability of the applicant to pay the fee and other relevant factors, the official custodian determines that the waiver would be in the public interest." The "other relevant factors" as utilized in GP § 4-206(e) are not expressly identified elsewhere within the PIA, but Maryland courts, as well as the Attorney General's Office have provided some guidance as to what types of factors may be considered by a custodian of records in terms of waiving fees associated with PIA requests.

First, a custodian of records may not deny a request for a fee waiver simply based on the financial burden associated with the request alone. *See Mayor and City Council of Baltimore v. Burke*, 67 Md. App. 147, 150–51, 506 A.2d 683, 684 (1986). Nonetheless, the financial burden associated with a request is still one of the relevant factors to be considered. Some additional relevant factors to be considered within this context include: (1) the public benefit derived from the disclosure of the information; (2) the importance of public disclosure of that information; and (3) the chilling effect the denial of a request for a fee waiver might have on members of the press. *Id.*

In addition, federal caselaw concerning the factors to be considered by a custodian of records under a comparable Freedom of Information Act ("FOIA") provision, *i.e.*, 5 U.S.C. § 552(a)(4)(A), provides illuminative guidance regarding the "other factors" a custodian may consider in reference to fee waivers. Federal caselaw makes clear that those factors include: (1) the extent to which dissemination of the records provides public insight into the operations or activities of a governmental entity or some related controversial topic or action; (2) the informative value of those records or their potential contribution to public understanding; (3) the significance of the disclosure's contribution to public understanding. *Project on Military Procurement v. Dept. of Navy*, 710 F. Supp. 362, 365 (D.D.C. 1989); *see also Nat'l Treasury Employees Union v. Griffin*, 811 F.2d 644 (D.C. Cir. 1987) (observing that fee waiver requests under FOIA must demonstrate a connection between the material sought and a matter of genuine public concern and must also indicate that a fee waiver or production of records will primarily benefit the public). The Attorney General has also indicated that

to your present request are likely those relating to construction of sewer systems between the County or other entities and the Maryland Department of the Environment ("MDE"). To the extent you are interested in accessing those agreements, you could consider submitting a request to MDE, which may maintain digitized versions of those records.

That being said, you essentially have two options: (1) substantially narrowing your request, at which point, a new determination would be made as to whether the County requires you to submit a deposit; or (2) proceed in paying the deposit previously requested by the County.

You may refer any concerns about this correspondence to the Public Access Ombudsman pursuant to GP § 4-1B-01 *et seq.* Additionally, do not hesitate to contact my office in the event you wish to narrow the scope of your request.

Sincerely,

KARPINSKI, CORNBROOKS & KARP, P.A.

By: Kevin Karpinski

KK:jp

cc: Kirk C. Downey, Esquire (kdowney@washco-md.net)
Kendall A. Desaulniers, Esquire (kdesaulniers@washco-md.net)
Kimberly Jacobson (kjacobson@washco-md.net)

E-FILED; Washington Circuit Court
Docket: 6/15/2023 4:50 PM; Submission: 6/15/2023 4:50 PM
Envelope: 13069961

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KEVIN KARPINSKI *
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JASON C. PARKINS
OLIVIA CARRARA*

* Admitted in MD and DC

DANIEL KARP
MICHAEL B. RYND
OF COUNSEL

RICHARD T. COLARESI
RETIRED

April 26, 2023

via email Jholder2004@gmail.com only
Justin Holder
308 West Chapline Street
Sharpsburg, Maryland 21782

RE: 342-102
PIA Request regarding "Washington County Sewer Agreements – Cloverton SUBDISTRICTS"

Dear Justin:

This serves as a response to correspondence sent to Washington County (the "County") on April 25, 2023 pursuant to the Maryland Public Information Act ("PIA"), Maryland Code, General Provisions Article ("GP") § 4-101, *et seq.*

In your request, you requested:

> [T]o inspect, photograph or copy the "agreements" to operate, construct and maintain a sewer/water system made between the Washington County Government and/or Washington County Sanitary District and municipalities/political bodies representing:
>
> Subdistrict 5-1 Cloverton/Greenlawn;
>
> signed and sealed on or before December 31st 1993.

County staff reviewed the files associated with your request. Attached is a copy of that document, Bates marked "Holder PIA 001–011."

E. 186
Exhibit 22

Please let me know if you have any questions. You may also refer any concerns about this correspondence to the Public Access Ombudsman pursuant to GP § 4-1B-01 *et seq.*

Sincerely,

KARPINSKI, CORNBROOKS & KARP, P.A.

By: Kevin Karpinski

KK:jp

Attachment

cc: Kirk C. Downey, Esquire (kdowney@washco-md.net)
Kendall A. Desaulniers, Esquire (kdesaulniers@washco-md.net)
Kimberly Jacobson (kjacobson@washco-md.net)

AGREEMENT

THIS AGREEMENT, made this 22nd day of November, 1989, by and between the WASHINGTON COUNTY SANITARY DISTRICT (hereinafter referred to as "DISTRICT") and the TOWN OF WILLIAMSPORT (hereinafter referred to as "TOWN").

EXPLANATORY STATEMENT

The DISTRICT is in the process of providing public sewer facilities to the communities known as Cloverton and Green Lawn located adjacent to the corporate boundaries of the TOWN. Within the proposed plan for construction of the Cloverton/Green Lawn collection system, the DISTRICT is desirous of making two connections to the TOWN's existing collection system to facilitate gravity flow from a total of eighteen (18) homes and one (1) vacant lot (hereinafter referred to as "lot") in the planned Cloverton/Green Lawn project area, said homes and lot being specifically identified on the attached plat which is made a part hereof by reference. (Exhibit A, Washington County Sanitary District Plat of Subdistrict 5-1, Cloverton/Green Lawn, Plat No. P-051-1001, Dated Nov. 16, 1989, a copy of which plat is also on file in the office of DISTRICT and in the office of the Clerk of the TOWN.)

Six (6) homes and lot from the Cloverton area on Peachtree Lane will be served by a connection made to the TOWN's manhole located in the alleyway located near Artizan Street as shown on the aforementioned plat. Twelve (12) homes from the Green Lawn area on Grove and Britner Avenues will be served by a connection made to the TOWN's manhole on Sunset Avenue at Grove Avenue as shown on the aforementioned plat.

Holder PIA 001
E. 188
Exhibit 22

The TOWN is willing to allow these connections out of a spirit of governmental cooperation. It is not the intention of the parties to make the eighteen (18) homes and lot which are the subject of this Agreement customers of the Town of Williamsport or for this Agreement to be considered as an extension of TOWN's sewer system. The homes and lot served by the Sanitary District shall be the Sanitary District's customers.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, the parties hereto mutually agree as follows:

1. That TOWN shall allow DISTRICT to make two connections to the TOWN's existing sewer system at the locations designated on the attached plat which is designated as Exhibit A which is attached hereto and made a part hereof by reference for the purpose of allowing transfer of waste water from eighteen (18) homes and lot which are specifically designated on the attached Exhibit A to the John "Al" Nicodemus Treatment Plant. TOWN shall continue to permit transfer of waste water so long as the TOWN operates sewer lines serving the areas immediate adjacent to Cloverton and Green Lawn areas which lie outside the corporate boundaries of the Town of Williamsport and/or so long as there is no breach of this Agreement by DISTRICT. DISTRICT shall not allow any additional connections other than those set forth and designated in this Agreement.

2. The parties mutually agree that the eighteen (18) homes and lot which are the subject of this Agreement shall be customers of the DISTRICT and serviced as such. The allowance of the connections by

Holder PIA 002
E. 189
Exhibit 22

TOWN shall not be considered an extension of the TOWN's existing sewer utility system. The parties mutually agree and acknowledge that the eighteen (18) homes and lot described herein are in the geographical confines of the DISTRICT's sub-district 5-1 boundary and not within the corporate boundaries of the TOWN.

3. The waste deposited through these eighteen (18) homes and lot into the TOWN's sewer system shall be of residential strength and quantity. No commercial, industrial or other than residential strength waste shall be deposited into the TOWN's system through the two connections and the eighteen (18) homes and lot which are the subject of this Agreement.

4. The parties agree and acknowledge that EPA design flow standards estimate the flow from the eighteen (18) homes and lot to be 3,800 gallons per day (200 gallons per house per day x 19). The parties agree that any sewer allocation which TOWN currently has available to it from DISTRICT or may have available to it from DISTRICT in the future shall not be affected or reduced in any way as a result of TOWN's agreement to allow the connections and transfer of waste water which is the subject of this Agreement. The DISTRICT shall deduct the greater of 3,800 g.p.d. or the actual water meter readings of the eighteen (18) homes and lot in question from the TOWN's total daily flow for purposes of determining the TOWN's average daily flow and/or purposes of sewer allocation.

5. TOWN shall provide at no cost to DISTRICT the quarterly water meter readings of the twelve (12) homes located in Green Lawn to which the TOWN currently provides public water service. DISTRICT shall

Holder PIA 003
E. 190
Exhibit 22

provide to the TOWN the water meter readings from the six (6) homes and lot in the Cloverton area on a quarterly basis as provided to the DISTRICT by the City of Hagerstown, Maryland. Utilizing a total figure for water consumption generated from the eighteen (18) homes and lot which are the subject of this Agreement, TOWN shall bill the DISTRICT quarterly for the total amount of waste water generated by the eighteen (18) homes and lot in accordance with the TOWN's current and/or future rate structure applicable to "County customers". The TOWN's current rate for "County customers" is $2.92 per thousand gallons. For the duration and term of this Agreement, TOWN shall charge DISTRICT the prevailing and applicable "County customer" rate, as it now exists, and/or as may be amended from time to time.

6. DISTRICT agrees that it shall be responsible for all maintenance, repair, connections, excavation and other related expenses for the installation, extension and/or connection of any lines or facilities necessary to run the connections from the eighteen (18) homes and lot to the point of connection with the TOWN's sewer system. Nothing herein shall be construed as a restriction upon the DISTRICT to bill its own customers for these expenses. Except as otherwise agreed herein, TOWN shall not seek additional compensation from DISTRICT for ordinary and customary maintenance, repair and/or replacement of TOWN's sewer collection system. In the event DISTRICT or any of its customers, agents, servants, employees and/or assigns intentionally and/or negligently damage or destroy TOWN's sewer collection system, DISTRICT shall save and hold harmless TOWN and indemnify TOWN from any fines, penalties, suits, expenses, damages, claims or demands,

Holder PIA 004
E. 191
Exhibit 22

including reasonable attorney's fees, of whatsoever nature or kind which may arise directly or indirectly from the said intentional and/or negligent acts.

7. DISTRICT agrees that it shall save and hold harmless and indemnify TOWN from any fines, penalties, suits, expenses, claims and/or demands, including reasonable attorney's fees, of whatsoever nature or kind that may arise directly or indirectly from the design, construction, maintenance and/or operations of the facilities which are the subject of this Agreement.

8. Nothing in this Agreement shall be construed to restrict, prohibit and/or prevent TOWN from modifying, expanding or changing TOWN's sewer system.

9. The parties mutually agree that no modification of this Agreement shall be binding upon the parties unless made in writing and executed with the same formality as this Agreement.

10. As to the covenants, promises and conditions contained in this Agreement, the parties hereto severally bind themselves, their heirs, personal representatives, successors and/or assigns.

11. The parties agree that this Agreement shall not be assigned without the prior written consent and approval of both parties.

12. This Agreement contains the entire understanding between the parties as it relates to the subject matter contained in this Agreement. Nothing contained herein shall be construed to modify, change or alter any other written agreements which may currently be in effect between TOWN and DISTRICT. Each party acknowledges by their signature that they have read and fully understand the terms,

Holder PIA 005
E. 192
Exhibit 22

conditions and covenants of this Agreement and that all prior agreements and understandings between the parties relating to this subject matter, either written or oral, are superseded by this Agreement. The individuals executing this Agreement further represent and warrant that they have been duly authorized and directed to execute this Agreement on behalf of TOWN and DISTRICT.

13. If any of the provisions of this Agreement are deemed to be invalid by a Court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.

14. This Agreement shall be construed and governed in accordance with the laws of the State of Maryland.

IN WITNESS WHEREOF, TOWN has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its Clerk, and DISTRICT has caused this Agreement to be signed and executed on its behalf by its Chairman, and duly attested by its Secretary/Treasurer, the day and year first above written.

WITNESS AND ATTEST AS TO CORPORATE SEAL

Gerianne M. Hammond, Secretary/Treasurer

WASHINGTON COUNTY SANITARY DISTRICT

BY: Louise A. Fahrney (SEAL)
Louise A. Fahrney, Chairman

WITNESS AND ATTEST AS TO CORPORATE SEAL

Donna Spickler, Town Clerk

TOWN OF WILLIAMSPORT

BY: John W. Slayman (SEAL)
John W. Slayman, Mayor

Holder PIA 006
E. 193
Exhibit 22

Holder PIA 007

E. 194

Exhibit 22

RESOLUTION ON INCLUSION OF SUBDISTRICT
NUMBER 5-1 CLOVERTON/GREENLAWN
WITHIN THE CORPORATE LIMITS OF THE
MUNICIPALITY OF WILLIAMSPORT, MARYLAND

WHEREAS; the Washington County Sanitary District is in the process of upgrading its system;

WHEREAS; the Washington County Sanitary District is desirous of placing certain facilities within the corporate limits of the Town of Williamsport;

WHEREAS; it is recognized by the Washington County Sanitary District and the Town of Williamsport that approval is necessary for any amendment to the Washington County Sanitary Subdistrict by the Town of Williamsport in order to allow Washington County Sanitary Commission to proceed;

WHEREAS; the Washington County Sanitary District has heretofore created subdistrict number 5-1 known as Cloverton/Greenlawn; and

WHEREAS; the final engineering design of the sewer system for the Greenlawn area recommends pumping station to be constructed on the lands of Wayne and Dorothy Byers, situate on the South side of Artizan Street adjacent to Maryland Route 68 within the corporate boundaries of the municipality of Williamsport, Maryland;

WHEREAS; final engineering design of the sewer collection system for Cloverton and Greenlawn area recommends portions of the collection facilities to be installed within the municipal boundaries of Williamsport, Maryland as shown on the attached plat entitled Cloverton/Greenlawn which is incorporated herein and made a part hereof by reference;

WHEREAS; the Washington County Sanitary District agrees that sewer service will not be provided to any property and cannot be provided to any properties within the municipal boundaries of Williamsport, Maryland without the written approval of the Mayor and Council and the Washington County Sanitary Commission; and

WHEREAS; the Washington County Sanitary District received certain zoning approvals from the Board of Zoning Appeals of the Town of Williamsport, Maryland, conditioned upon the Washington County Sanitary District obtaining a proper amendment to the subdistrict, and to obtaining the approval of the Mayor and Council of the Town of Williamsport; and

WHEREAS; said approval and opinion of the Board of Zoning Appeals dated November 3, 1988 is attached hereto and incorporated herein by reference and made a part of this resolution and the conditions hereof;

NOW THEREFORE, be it resolved by the Mayor and Council of the Town of Williamsport, Maryland as its duly constituted legislative body that the Town does hereby consent to the inclusion of said portions of properties located within the geographical confines of the Town of Williamsport as shown on the attached exhibit, within the Sanitary District Number 5-1 Cloverton/Greenlawn,

and be it further resolved that said approval is contingent upon and subject the following:

1. The facility or facilities to be designed and/or constructed shall be and remain the property of the Washington County Sanitary District. The Town of Williamsport, Maryland shall have no responsibility of ownership, maintenance, construction or reconstruction.

2. The facility or facilities shall be constructed and operated "ODOR FREE" by the Washington County Sanitary District and/or its successors.

3. The facility or facilities to be designed and constructed shall be designed and constructed in accordance with all applicable federal, state, county, town, acts, ordinances and regulations.

4. The Washington County Sanitary District shall be solely responsible for the obtaining of any and all licenses, permits, right-of-ways, and/or easements that may be necessary to construct and/or maintain the facilities or to operate same.

5. The Washington County Sanitary District shall save and hold harmless and indemnify the Town of Williamsport from any fines, penalties, suits, expenses, claims or demands of whatsoever nature or kind that may arise directly or indirectly from the design, construction, maintenance, and/or operation of the facility or facilities in question;

BE IT FURTHER RESOLVED, that approval hereby granted is only specifically for the area set forth and designated on the attached exhibits and is not to be construed as granting any additional approvals and/or consents of whatsoever nature or kind to the Washington County Sanitary District.

ATTEST:

Donna K. Spickler

Donna Spickler,
Town Clerk

MAYOR AND COUNCIL
TOWN OF WILLIAMSPORT, MARYLAND

John W. Slayman (SEAL)

John W. Slayman
Mayor

DATE OF INTRODUCTION: January 9, 1989

DATE OF PASSAGE: January 9, 1989

EFFECTIVE DATE: January 9, 1989

ACCEPTANCE AND AGREEMENT
BY THE WASHINGTON COUNTY SANITARY DISTRICT
TO TERMS OF THE AFOREGOING RESOLUTION

The Washington County Sanitary District by its duly authorized signatory does hereby represent unto the town of Williamsport, Maryland an agreed to the following:

1. The Washington County Sanitary District does hereby consent to, ratify, accept, approve and agree to all of the terms, conditions and provisions of the aforegoing resolution introduced at a duly constituted meeting on the 27th day of February 19 89 and passed on said date "in toto".

Witness the signature of the duly authorized representative of the Washington County Sanitary District this 27th day of February, 1989.

ATTEST:

Lynn Palmer

WASHINGTON COUNTY SANITARY DISTRICT

BY: Lowell A. Fahrney (SEAL)

KARPINSKI, CORNBROOKS & KARP, P.A.

ATTORNEYS AT LAW
120 East Baltimore Street, Suite 1850
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Facsimile 410-727-0861
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KEVIN KARPINSKI *
E. I. CORNBROOKS, IV

DANIEL M. SCAPARDINE
JASON C. PARKINS
OLIVIA CARRARA*
CHRISTINA DONALD

* Admitted in MD and DC

DANIEL KARP
MICHAEL B. RYND
OF COUNSEL

RICHARD T. COLARESI
RETIRED

May 23, 2023

via email Jholder2004@gmail.com only
Justin Holder
308 West Chapline Street
Sharpsburg, Maryland 21782

RE: 342-102
PIA Request regarding "Washington County Sewer Agreements – Maugensville SUBDISTRICT"

Dear Justin:

This serves as a response to correspondence sent to Washington County (the "County") on April 26, 2023 submitted pursuant to the Maryland Public Information Act ("PIA"), Maryland Code, General Provisions Article ("GP") § 4-101, *et seq.*

In that request you sought the following:

> I would like to inspect, photograph or copy the 'agreements' to operate, construct and maintain a sewer/water system made between the Washington County Government and/or Washington County Sanitary District and municipalities/political bodies representing:
>
> Subdistrict 15 Maugensville/orchard Hills;
>
> signed and sealed on or before December 31st 1993.

As you are well aware, you previously requested all such sewer agreements and the County requested a deposit associated with the search and retrieval of all fifteen of those agreements, which are housed in numerous boxes of

Exhibit 23

documents, organized by project/location. You declined to pay the deposit the County requested and subsequently sought the sewer agreement corresponding to the Cloverton subdistrict by way of yet another PIA request. Out of an abundance of good faith and under the impression that you were narrowing the scope of your prior request, the County conducted a search and provided you with a copy of the Cloverton agreement.

In the instant request, you seek another one of the sewer agreements. It has become apparent to the County that you are attempting to individually request those agreements to circumvent the fee estimate and the request for a deposit that the County previously provided to you. While the PIA does not specifically address the aggregation of separate PIA requests, this issue has been addressed by the Public Information Act Compliance Board:

> As the PIA Manual explains, on 'rare occasion[s],' a requestor might 'attempt to artificially break a large request into a series of smaller requests in order to obtain two free hours searching for each request, thereby circumventing the assessment of a higher fee.

PIACB Op. 21-12 (May 27, 2021) (citing Office of the Attorney General, Maryland Public Information Act Manual (16th ed. 2021) at 7-2); *see also* PIACB Op. 22-05 (Dec. 10, 2021).

That being said, it has become clear that you are attempting to individually request each of the fifteen agreements you previously requested from the County in attempt to circumvent the assessment and payment of the fee associated with the search of those records previously identified by the County. As a sidenote, in another letter that will be sent to you today, the County revised the fee estimate previously provided, given that the County provided the Cloverton agreement to you. Accordingly, because you are seeking to individually request each of those fifteen agreements and artificially break-down your prior request into smaller requests to obtain the benefit of two free hours of search time for each, the County is aggregating this request with your initial request for those records.

In accordance with my response to your PIA request for "Washington County Sewer Agreements – OTHER SUBDISTRICTS," the County requests that you pay a $7,082.20 deposit to proceed with your prior request for all of the sewer agreements you previously requested, excluding the Cloverton agreement which was previously provided to you. At this point, the estimated deposit is not concrete and the cost of fulfilling your request may be less than or exceed that amount. If the cost is less than the estimated deposit, any unused funds will be

returned to you. If the cost exceeds your deposit, the County may require you to submit additional funds to proceed with your request and to provide you with the responsive records. Please let me know if you intend to submit a deposit and to proceed with your request.

You may refer any concerns about this correspondence to the Public Access Ombudsman pursuant to GP § 4-1B-01 *et seq.* Additionally, do not hesitate to contact my office in the event you wish to narrow the scope of your request.

Sincerely,

KARPINSKI, CORNBROOKS & KARP, P.A.

By: Kevin Karpinski

KK:jp

cc: Kirk C. Downey, Esquire (kdowney@washco-md.net)
Kendall A. Desaulniers, Esquire (kdesaulniers@washco-md.net)
Kimberly Jacobson (kjacobson@washco-md.net)

E-FILED; Washington Circuit Court
Docket: 6/15/2023 4:50 PM; Submission: 6/15/2023 4:50 PM
Envelope: 13069961

Jason Parkins

From: Jason Parkins
Sent: Thursday, January 12, 2023 11:39 AM
To: Justin Holder
Cc: Kevin Karpinski
Subject: RE: Friendly Reminder on MPIA request(s) outstanding

Mr. Holder,

I am contacting you on behalf of Mr. Downey in reference to the email below. Mr. Downey's responses are set forth in red under the individual requests referenced in your email:

Mr. Downey,

Good afternoon. I hope this email finds you well, and the County had a wonderful holiday. As requested (see postscript *infra*) I am writing to remind the Honorable Custodian of its obligations to the Public in respect to the MPIA. I am currently tracking 4 MPIA's that have not been resolved, all 4 of being of grave public interest:

1) **MPIA - FBI COMMUNICATIONS RELATE TO CYBER SECURITY INCIDENT** generally requesting "**In short I am requesting any evidence or communications that the County DECLINED/REFUSED/DENIED the assistance and/or help of the US GOVERNMENT IN recovering the money and/or data; I do not want any communications in which the County accepted the assistance of the US GOVERNMENT in Recovering the data and money;**"

If any documents responsive to your request exist, as indicated in the letter you received from my office on November 28, 2022, these records pertain to an ongoing law enforcement investigation and your request is denied pursuant to GP § 4-351(a)(1). To the extent you are considered a "person in interest" under the PIA with respect to those records, your request is denied pursuant to GP § 4-351(b)(1), (3), and (6) as disclosure of the information you requested would "interfere with a valid and proper law enforcement proceeding[,]" "constitute an unwarranted invasion of personal privacy[,]" and "prejudice an investigation[.]" Your request is also denied on the basis that any such responsive records would fall under the attorney/client privilege. GP § 4-301(a)(1).

Pursuant to GP § 4-362, you are entitled to seek judicial review of this decision. You may also refer any concerns about this correspondence to the Public Access Ombudsman pursuant to GP § 4-1B-01 et seq. Additionally, do not hesitate to contact my office in the event you wish to clarify or narrow the scope of your request.

2) **MPIA - Follow Up - Sanitary District SD-4 Keedysville/Sharpsburg - Intergovernmental Agreement**
generally requesting "agreements between Washington Co. and sub division/town for sewerage services" where the County Attorney represented in schedule "c872" the records were "permanently Retained;"

With respect to this request, the County has reviewed its files and has no responsive documents.

3) **MPIA - MPIA - ELECTRONIC COPY - August 3rd O'Neal to Bright email**
simply requesting Mr. Josh O'Neal forward the "August 3rd O'Neal to Bright email" directly to my email without any "modifications;" and

The County has previously responded to this request and provided you with a copy of the .zip file you requested. Mr. O'Neal will not be directly forwarding the email to you.

4) **MPIA - Letters opposing Civil War Rail Trail**
generally requesting "the 1 gigabyte of data" Mr. Andrew Eschelman opined would take him 5 minutes to put on a thumb drive, (the "4 unresolved requests.")

The County previously responded to this line of requests and requested that you submit a deposit for the requested records. At present, no such deposit has been paid. Please let me know if you wish to pay the deposit to proceed with this request.

PUBLIC INTEREST IN the 4 unresolved requests:

The Public does not want to interfere with a cybersecurity investigation, but it is peculiar why the County would decline assistance from the United States Government.

On April 17th 2020 I requested the Sewer Agreement between Keedysville and Washington County for SD4-1, which after 50 plus requests the County has just refused to produce and represent they do not have, despite the Permanent Retention policy. These agreements must be of grave public importance, and the Counties reluctance to turn it over is quite peculiar.

The Aug. 3rd would take less than 1 minute to complete, as would the 1 gigabyte of data on the Letters opposing Civil War Rail Trail. The failure to release these records defies logic and reason.

The Public is concerned why so many resources are being devoted to the withholding of records the undersigned applicant is entitled to as a matter of law.

"Knowing" the law *infra*:

Best regards,

Jason C. Parkins, Esq.
Karpinski, Cornbrooks & Karp, P.A.
120 East Baltimore Street
Suite 1850
Baltimore, Maryland 21202
Telephone: 410-727-5000
Facsimile: 410-727-0861
jparkins@bkcklaw.com
This electronic message transmission contains information that may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you have received this communication in error, please re-send this communication to the sender and delete the original message and any copy of it from your computer system.

E-FILED; Washington Circuit Court
Docket: 6/15/2023 4:50 PM; Submission: 6/15/2023 4:50 PM
Envelope: 13069961

Jason Parkins

From: Brenda Pizanis
Sent: Wednesday, February 15, 2023 12:49 PM
To: Justin K. Holder (jholder2004@gmail.com)
Cc: Downey, Kirk; Desaulniers, Kendall A.; Jacobson, Kimberly D.; Kevin Karpinski; Jason Parkins
Subject: 342-102, PIA Request to Washington County regarding Chip Wood Correspondence
Attachments: Holder 021523 re Chip Wood Correspondence.pdf

Good afternoon:

Attached please find a letter from Kevin Karpinski regarding the above-referenced matter. Thanks and have a great day!

Brenda Pizanis
Assistant to Kevin Karpinski
Karpinski, Cornbrooks & Karp, P.A.
120 East Baltimore Street
Suite 1850
Baltimore, Maryland 21202-1617
410-727-5000
Fax 410-727-0861

KARPINSKI, CORNBROOKS & KARP, P.A.

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Baltimore, Maryland 21202-1617

Telephone 410-727-5000
Facsimile 410-727-0861
Email bkcklaw@aol.com
Website www.kcklegal.com

KEVIN KARPINSKI *
E. I. CORNBROOKS, IV

DANIEL M. SCAPARDINE
JASON C. PARKINS
OLIVIA CARRARA*

* Admitted in MD and DC

DANIEL KARP
MICHAEL B. RYND
OF COUNSEL

RICHARD T. COLARESI
RETIRED

February 15, 2023

via email Jholder2004@gmail.com only
Justin Holder
308 West Chapline Street
Sharpsburg, Maryland 21782

RE: 342-102
PIA Request to Washington County regarding Chip Wood Correspondence

Dear Justin:

This correspondence is in response to the request for records you made pursuant to the Maryland Public Information Act ("PIA"), Maryland Code, General Provisions Article ("GP") § 4-101, *et seq.* to Washington County (the "County") on January 20, 2023 in which you sought the following:

> Please provide all correspondence/communications/emails/ letters/text messages/public records; to or from
>
> Chip Wood and any agent/employee/representative of Washington County; relating in any way to
>
> land/title/deed/ownership of the abandoned branch of the Washington County Railroad the MD Dept. of Natural Resources sometimes refers to as the Weaverton to Roxbury Rail Trail a.k.a the Civil War Rail Trail; and/or request by Chip

Wood for searches of land/title/deed/ownership research;

whether or not said research has or has not been performed.

The County has begun searching its records for all communications involving Mr. Woods that may meet the description of the items you requested. The County's search has revealed a number of potentially responsive documents. Those documents will need to be reviewed for the County to determine whether they are responsive to your request. Pursuant to the PIA, the County may charge a reasonable fee to search for and prepare responsive records. *See* GP § 4-206(b). The first two hours of search and preparation time are free. *See* GP § 4-206(c).

The County estimates that the amount of time it will take to collect and review all of those records, determine which are responsive, and to implement any redactions that are required or permitted under the PIA will exceed the two free hours of search time provided for under GP § 4-206(c). Should you decide to proceed with your request, the County is permitted to request the prepayment of fees associated with a PIA request. *See Glass v. Anne Arundel Cty.*, 453 Md. 201, 212–13, 160 A.3d 658, 664–65 (2017).

Therefore, the County requests that you submit a deposit in the amount of Two Hundred and Seventy-Five Dollars ($275.00) with respect to your request. At this juncture, the amount of time and associated funds that the County will be required to complete the search is uncertain. In the event that the time and associated cost, spent by the County searching for, retrieving, and reviewing the records exceeds the amount of the deposit, the County reserves the right to request additional funds to respond to your request. In the event the County's time/cost in searching for, retrieving, and reviewing those records is less than the deposit you submitted, the County will refund the remaining portion of your deposit to you. Please let me know if you are willing to submit a deposit and, if so, the County will contact you regarding potential methods of payment.

You may also narrow your request. If you do so, another determination will be made as to whether any fee will need to be charged. Please do not hesitate to contact me if you have any questions or concerns

regarding this correspondence.

You may refer any concerns about this correspondence to the Public Access Ombudsman pursuant to GP § 4-1B-01 *et seq*.

Sincerely,

KARPINSKI, CORNBROOKS & KARP, P.A.

/s/

By: Kevin Karpinski

KK:jp

cc: Kirk C. Downey, Esquire (kdowney@washco-md.net)
Kendall A. Desaulniers, Esquire (kdesaulniers@washco-md.net)
Kimberly Jacobson (kjacobson@washco-md.net)

E-FILED; Washington Circuit Court
Docket: 6/15/2023 4:50 PM; Submission: 6/15/2023 4:50 PM
Envelope: 13069961

Jason Parkins

From:	Brenda Pizanis
Sent:	Wednesday, February 15, 2023 12:53 PM
To:	Justin K. Holder (jholder2004@gmail.com)
Cc:	Downey, Kirk; Desaulniers, Kendall A.; Jacobson, Kimberly D.; Kevin Karpinski; Jason Parkins
Subject:	342-102, PIA Request to Washington County regarding Communications related to the Destruction of Permanent Records
Attachments:	Holder 021523 re Destruction of Permanent Records.pdf

Good afternoon:

Attached please find a letter from Kevin Karpinski regarding the above-referenced matter. Thanks and have a great day!

Brenda Pizanis
Assistant to Kevin Karpinski
Karpinski, Cornbrooks & Karp, P.A.
120 East Baltimore Street
Suite 1850
Baltimore, Maryland 21202-1617
410-727-5000
Fax 410-727-0861

KARPINSKI, CORNBROOKS & KARP, P.A.

ATTORNEYS AT LAW
120 East Baltimore Street, Suite 1850
Baltimore, Maryland 21202-1617

Telephone 410-727-5000
Facsimile 410-727-0861
Email bkcklaw@aol.com
Website www.kcklegal.com

KEVIN KARPINSKI *
E. I. CORNBROOKS, IV

DANIEL M. SCAPARDINE
JASON C. PARKINS
OLIVIA CARRARA*

* Admitted in MD and DC

DANIEL KARP
MICHAEL B. RYND
OF COUNSEL

RICHARD T. COLARESI
RETIRED

February 15, 2023

via email Jholder2004@gmail.com only
Justin Holder
308 West Chapline Street
Sharpsburg, Maryland 21782

RE: 342-102
PIA Request to Washington County regarding Communications related to the Destruction of Permanent Records

Dear Justin:

This correspondence is in response to the request for records you made pursuant to the Maryland Public Information Act ("PIA"), Maryland Code, General Provisions Article ("GP") § 4-101, *et seq.* to Washington County (the "County") on January 20, 2023 in which you provided a copy of Schedule No. C872 and requested the following:

> [A]ny and all:
>
> communications, emails, memorandum, letters, instructions, records, transmittals, forms, correspondence and/or mail;
>
> relating to the destruction of "Permanent Records" as described supra, specifically destruction of the 1988-1991 agreement(s) between "Washington County and sub division/town for water and sewerage services."

The County conducted a search of its records. As previously indicated by the County, the County is not in possession of a document that fits the description of an "agreement between 'Washington County and sub

division/town for water and sewerage services.'" Nonetheless, the County has no records responsive to your request.

You may refer any concerns about this correspondence to the Public Access Ombudsman pursuant to GP § 4-1B-01 *et seq*. Additionally, do not hesitate to contact my office in the event you wish to clarify the scope of your request.

Sincerely,

KARPINSKI, CORNBROOKS & KARP, P.A.

/s/

By: Kevin Karpinski

KK:jp

cc: Kirk C. Downey, Esquire (kdowney@washco-md.net)
Kendall A. Desaulniers, Esquire (kdesaulniers@washco-md.net)
Kimberly Jacobson (kjacobson@washco-md.net)

Jason Parkins

From: Downey, Kirk <kdowney@washco-md.net>
Sent: Wednesday, February 15, 2023 4:30 PM
To: Kieffer, Zachary; Desaulniers, Kendall A.; Jacobson, Kimberly D.
Cc: Kevin Karpinski; Jason Parkins
Subject: FW: MPIA - Investigation into Destruction of Permanent Records
Attachments: Holder 021523 re Destruction of Permanent Records.pdf

[redacted]

From: Justin Holder <jholder2004@gmail.com>
Sent: Wednesday, February 15, 2023 4:11 PM
To: Downey, Kirk <kdowney@washco-md.net>
Cc: Kevin Karpinski <kevin@bkcklaw.com>
Subject: MPIA - Investigation into Destruction of Permanent Records

WARNING!! This message originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Any claims of being a County official or employee should be disregarded.

Dear Mr. Downey,

Good afternoon. I hope all is well.

Background Information

On January 20, 2023 I made a request generally for the correspondence or authorization to destroy a public record the Washington County Attorney represented to Md. Dept. of General services was to be permanently retained. The record was of public import because it established the agreement to construct/maintain and operate a sewer system in Keedysville Maryland and I had requested that record on April 17th 2020.

The custodian answered my request as:

> "As previously indicated by the County, the County is not in possession of a document that fits the description of an '"agreement between "'Washington County and subdivision/town for water and sewerage services.'"' Nonetheless, the County has no records responsive to your request."

I did not request to inspect the agreement. I requested to inspect the correspondence authorizing and/or instructing the permanent record destroyed. For the purpose of this instant application I am assuming the custodian did search and found no correspondence authorizing destruction of the permanent records.

THE REQUEST/APPLICATION

I write to inspect and photocopy public records in accordance with GP 4-101 *et seq.* Please provide or allow me to photocopy:

[A]ny and all:

investigative records, employee reprimands, policy and procedural remedial measures take and/or notices sent to the Md. Dept of General services;

relating to the destruction of "Permanent Records" as described *supra* and in attached ***Holder 021523 re Destruction of Permanent Records.pdf;*** specifically in reference to the destruction of the 1988-1991 agreement(s) between "Washington County and sub division/town for water and sewerage services."

Please provide a time, cost and reason for any delay in accordance with GP 2-203.

E. 212
Exhibit 27

E-FILED; Washington Circuit Court
Docket: 6/15/2023 4:56 PM; Submission: 6/15/2023 4:56 PM
Envelope: 13070641

Jason Parkins

From: Downey, Kirk <kdowney@washco-md.net>
Sent: Wednesday, February 15, 2023 4:58 PM
To: Kieffer, Zachary; Jacobson, Kimberly D.; Desaulniers, Kendall A.
Cc: Kevin Karpinski; Jason Parkins
Subject: FW: MPIA - Number of Chip Woods Records
Attachments: Holder 021523 re Chip Wood Correspondence.pdf

[redacted]

[redacted]

[redacted]

From: Justin Holder <jholder2004@gmail.com>
Sent: Wednesday, February 15, 2023 4:37 PM
To: Downey, Kirk <kdowney@washco-md.net>
Cc: Desaulniers, Kendall A. <kdesaulniers@washco-md.net>; Kevin Karpinski <kevin@bkcklaw.com>
Subject: MPIA - Number of Chip Woods Records

WARNING!! This message originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Any claims of being a County official or employee should be disregarded.

Dear Mr. Downey,

Good afternoon. I hope all is well.
In attached ***Holder 021523 re Chip Wood Correspondence*** the custodian states:

"The County's search has revealed a number of potentially responsive documents."

I write to inspect and photocopy public records in accordance with GP 4-101 *et seq*. Please provide or allow me to photocopy:

"The public record that indicates the 'number' of responsive records the 'search has revealed'.

Please provide a time, cost and reason for any delay in accordance with GP § 2-203.

Have a great week and enjoy this glorious weather.

Respectfully,

Date Received		Nature of Request		Outcome
4.17.2020		Keedysville and Sharpsburg water and sewer information		5.22.2020 Response with documents sent
				5.26.2020 Supplemental Response with additional documents
4.18.2020		Road Maps		5.20.2020 Response with documents sent
4.30.2020		Grinder Spec Sheet		5.22.2020 Response with documents sent
5.22.2020		Documentation for any loan applications, Ordinances, etc.		5.28.2020 Response sent with quote for previous requests and upfront payment for this new request
				6.24.2020 Response sent after JH removes parts of request nos. 1-2
5.31.2020		Copies of all email correspondence with keywords		6.10.2020 Response with quote sent
		(6.10.2020 Same as 5.31 request, but refocused)		6.23.2020 Response with quote sent for refocused request
6.8.2020		4-1 Sanitary District and Map		6.17.2020 Response with quote sent
6.10.2020		Copies of Jeremy Mose emails		7.15.2020 Response sent, no responsive documents
6.16.2020		Copies of Barry Levy emails		6.23.2020 Response with quote sent
		(6.23.2020 Same as 6.16 request, but refocused)		7.21.2020 Response, no responsive documents located
6.15.2020		Copies of emails containing specific attachment		6.23.2020 Response with documents
6.23.2020		Copies of emails using specific keywords		6.23.2020 Response with quote for requests 9-13 sent
6.29.2020		Copies of Mark Mummert's phone records		7.2.2020 Response sent, rebuttal received same day
				7.16.2020 Response sent with Documents
7.10.2020		Sewer Policy related documents		7.21.2020 Response with quote sent
7.22.2020		Sewer Connection Notices		7.22.2020 Response, no responsive documents
7.22.2020		As-Built sewer drawings		7.24.2020 Response with Documents sent
7.24.2020		2009 Water and Sewer Plan		7.27.2020 Response with Documents sent
7.27.2020		Info related to '94 Amendment of Water and Sewer Plan		8.7.2020 Response with quote sent
		(8.9.2020 Same as 7.27 request but refocused)		8.21.2020 Response requiring payment of deposit in order to proceed
7.30.2020		Weaverton Roxbury Rail Trail MOU with DNR		8.28.2020 Response, no responsvie documents
8.3.2020		Morral emails		8.4.2020 Denial sent
8.27.2020		Financial statement from sanitary district 4-1		9.3.2020 Response with quote sent
9.1.2020		Map of 4-1 Wells and Septic		9.16.2020 Initial response, 9.29.2020 official response with document sent
9.4.2020		4-1 Sewer Main Connection Plan		9.16.2020 Response with quote sent
9.11.2020		Soloman Gap Road documents		9.29.2020 Response with quote sent
9.11.2020		Pig Town Road or Doubs Town Road docs		9.24.2020 Response with quote sent

9.11.2020		Snyder's Landing Road documents		9.24.2020 Response with quote sent
9.11.2020		Mt. Hebron Road docs		9.24.2020 Response with quote sent
9.11.2020		Mt. Briar Road docs		9.24.2020 Response with quote sent
9.14.2020		Todd Moser emails and call logs		9.29.2020 Response with quote sent
9.14.2020		M. Voorhaar emails		9.29.2020 Response with quote sent
9.14.2020		B. Levy and Hull emails		9.29.2020 Response with quote sent
9.29.2020		CSX Railroad - Keedysville		10.14.2020 Response, no responsive documents
9.29.2020		PIA Requests submitted from 1.1.2020 to 9.29.2020		10.21.2020 Response with quote sent
10.3.2020		Cost of Erecting Signs, by Statute		10.19.2020 Response, no responsive documents
10.6.2020		Dog Street Road		10.19.2020 Response, no responsive documents
10.7.2020		Scott Hobbs, Proposed Civil War Trail		11.4.2020 Response with documents sent
10.11.2020		Geeting Road, Dogstreet Road, etc.		11.4.2020 Response with quote sent
10.11.2020		Copies of Co. communication with Robert R. Schwartz		11.4.2020 Denial sent
10.14.2020		Renewal of 8.3.2020 request for Morral emails		10.15.2020 Denial sent
10.16.2020		Request specifically for emails between Morral and County employees		11.16.2020 Response, no responsive documents
10.19.2020		Copies of B. Levy email containing specific movie attachment		11.4.2020 Response, no responsive documents
10.20.2020		Exceptions to local Ethics Law and Disclosures		11.19.2020 Response, no responsive documents
10.20.2020		Correspondence with Clear Spring properties for well and septic issues		11.19.2020 Response, no responsive documents
10.21.2020		Revision of 9.29 request, PIA sent to kdowney@washco-md.net		11.20.2020 Response with documents sent
10.23.2020		Revised request for Vaughn Index		11.5.2020 Response, request too broad
10.25.2020		Special Exception or Variance Zoning Hearing Minutes		11.20.2020 Response with documents sent
10.30.2020		Survey records in compliance with 1903 Statute		11.20.2020 Response requesting clarification of request
11.3.2020		Antietam Drive documents		11.19.2020 Response with quote sent
11.3.2020		Water Line Breaks and Road Sink Hole Records from 1990-2000		12.1.2020 Response, no responsive documents
11.4.2020		Revised request with spelling change to "Levey"		
11.16.2020		.mov attachements		11.19.2020 Response, no responsive documents
11.21.2020		Custodian of records for Ethics Commission		11.23.2020 Response sent
11.21.2020		Previous surveyor records in compliance with 1903 Statute		12.2.2020 Response sent, no possession of the records of private individuals

11.21.2020		Local Government Tort Reform Act-Claims, Notices		11.23.2020 Response, request too broad
				12.13.2020 Response with quote sent
11.21.2020		Building Permits		11.23.2020 Response, no responsive documents
11.21.2020		Complaint Log		11.23.2020 Response, no responsive documents
11.21.2020		Documents relative to Triennial Review		12.23.2020 Response, no responsive documents
11.23.2020		Refocused 11.21 request		
11.23.2020		Ethics Disclosure forms and complaints		11.25.2020 Response with quote sent for this and 10.20 requests
11.23.2020		Road maintenance records from 1910-1974, and various other documents		11.25.2020 Response with documents sent
11.23.2020		All email, letters and correspondence from 1.1.2017 to present containing "PIA" "mpia" "foia" and "public information"		Multiple back and forth correspondence refocusing request, but final response with quote sent 1.29.2022
11.25.2020		Ratio of ethics disclosure forms and complaints		
11.25.2020		Question regarding how far back road lists go		12.11.2020 Response sent
11.26.2020		Privileged Disclosure Statements		
11.27.2020		Stonecrest Plats documents		12.11.2020 Response with quote sent
11.27.2020		Directory of County employees from adoption date of Ethics Ordinance		12.28.2020 Initial Response Sent, 1.19.2021 Response with document sent
11.30.2020		Antietam Drive documents		11.19.2020 Response with quote sent
12.1.2020		Mt. Hebron Road sewer related records		12.11.2020 Response with documents sent
12.1.2020		Question regarding intent to repair various areas		12.9.2020 Response, no answer or responsive documents
12.2.2020		Keedysville Boundary Survey and Abandonment Plat file		12.28.2020 Response with document sent
12.3.2020		Sanitary District Maps from 1974		12.10.2020 Response sent requesting clarification
12.3.2020		Revisal of 10.30. and 11.21 requests		12.14.2020 Response with documents sent
12.3.2020		Copy of County Minute Indexes for Commissioners, Road Commission, and Sanitary District		12.18.2020 Response sent, now involves attorney Adam Grievell
12.6.2020		Question regarding what happened to sewer line on Antietam Drive		
12.8.2020		Horshoe Bend Agreement		12.8.2020 Response with document sent
12.9.2020		Revisal of 12.3 request		

12.11.2020		Question as to whether documents provided are Soil Conservation documents		
12.11.2020		Hook Up Sheets		12.18.2020 Response with documents sent
12.14.2020		List of Notices of Claims		1.8.2021 Response with documents sent
12.16.2020		Wash. Co. Water and Sewer Plan WS-03-003		1.21.2021 Response with document sent
12.17.2020		Intermunicipal Agreement		1.19.2021 Response, no responsive documents
12.23.2020		Refocusing of a previous request for soil conservation documents		1.22.2021 Response, no responsive documents
12.23.2020		Records of taxpayer complaint driven road improvement - Peachy Aquilla		1.22.2021 Response with document sent
12.26.2020		Grant and Loan Records for inspection		
12.27.2020		1992 EPA Consent Order, request to inspect in person		Inspected in person
1.4.2021		BCM Engineer Study WS Plan, request to inspect in person		1.19.2021 Response with quote sent
1.7.2021		WS-03-001 and WS-03-002 Amendments, request to inspect in person		2.10.2021 Response sent
1.14.2021		Change Order SD-4-1, request to inspect in person		1.28.2021 Response with quote sent
1.21.2022		8.30.20 Mistro Brady Doctrine		
1.22.2021		Index for Text and Map Amendments for WS Plan		2.10.2021 Response, no responsive documents
1.22.2021		George Nagel Records and Abandonment Records locations		2.19.2021 Response with answers sent
1.22.2021		1973 BOCC Minutes		2.26.2021 Response with documents sent
1.23.2021		1958 roads list (1.29 follow up to request additional information		2.19.2021 Response with answers sent
1.31.2021		Grinder Pump (tortious interference with grants)		2.10.2021 Response with answer sent
2.18.2021		Question regarding how FDS records are stored, etc.		3.11.2021 Response with answers sent
2.23.2021		Records for County Road 594 Eakles Mill Road		3.11.2021 Response with answers sent
2.25.2021		Supplemental Reference Information		
3.7.2021		Petition from 4.30.1860 BOCC meeting		4.6.2021 Response, no responsive documents
3.9.2021		Why are portions of Antietam Drive not connected to sewer		
3.12.2021		Victoria L. Malott correspondence		4.6.2021 Response, no responsive documents as subject is not a County employee

3.19.2021		Title to Dog Street Road - Docs supporting County's ownership		4.6.2021 Response, no responsive documents
4.6.2021		Revised 3.12 request		
5.13.2021		clmorral@gmail.com		6.10.2021 Response, no responsive documents
7.21.2021		Correspondence with the Sheriff's Dept		
12.11.2021		Correspondence regarding the Civil War Rail Trail		1.7.2022 Initial Response, Co. employee out on leave; 1.18.2022 Follow Up Response, Official response with quote sent by Kevin Karpinski's office on 1.27.2022
5.11.2022		Closed Session audio recordings		
6.10.2022		Correspondence re: Andy Bright, Joe Michael		6.15.2022 Karpinski responded with one responsive email
11.13.2022		Records from 1930 to present re: minutes and atlas of sewer line in Keedysville		Repeat request
11.30.2022		Inquiry into documents re: cybersecurity incident in Washingon County		11.30.2022 Denied, active and ongoing investigation
12.10.2022		Follow up request re: 1988 Sanitary Sewer Agreement		
12.12.2022		FBI communications re: cybersecurity incident in Washington County		
1.20.2023		Anything related to destruction of "permanent records"		2.15.2022 Response, no responsive documents
1.29.2022		Chip Woods Correspondence and documents		2.15.2023 Response with quote sent by Kevin Karpinski's office
2.15.2023		Clarification on 1.20 request related to destruction of "permanent records"		
2.15.2023		Request for document stating number of responsive documents re: 1.29 request		

E-FILED; Washington Circuit Court
Docket: 6/15/2023 4:56 PM; Submission: 6/15/2023 4:56 PM
Envelope: 13070641

IN THE CIRCUIT COURT
FOR WASHINGTON COUNTY

JUSTIN KYLE HOLDER	*	
Plaintiff	*	
v.	*	Case No.: C-21-CV-23-000016
BOARD OF COUNTY COMISSIONERS, WASHINGTON COUNTY, *et al.*	*	
Defendants	*	

* * * * * * * * * * * * * *

AFFIDAVIT OF KIRK C. DOWNEY, ESQUIRE

I hereby affirm under the penalties of perjury that I am over eighteen (18) years of age, competent to testify, have personal knowledge of the facts and circumstances set forth below, and that all such facts and circumstances are true:

1. I am currently employed as the County Attorney for Washington County.

2. In my role, I am the Public Information Act Representative for the County as set forth in Appendix J of the Attorney General's Office Maryland Public Information Act Manual (17th ed., July 2022).

3. As the County's Public Information Act Representative, I receive some requests made pursuant to the Maryland Public Information Act and oversee and coordinate the County's responses to those requests, including a litany of requests may by Plaintiff, Justin Holder, and those requests referenced

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Exhibit 30

by Mr. Holder in the Complaint in the above referenced matter.

4. Exhibits one through twenty-nine of the County's Motion to Dismiss or, in the Alternative, Motion for Summary Judgment (the "Exhibits") are true and accurate records pertaining to the Public Information Act requests Mr. Holder has made to the County and the County's responses thereto.

5. Attached as Exhibit twenty-nine to the County's Motion for Summary Judgment is a spreadsheet tracking the Public Information Act requests Mr. Holder submitted to the County from April 17, 2020 until February 15, 2023. Mr. Holder has submitted numerous additional requests to the County since February 15, 2023.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing are true.

6/15/2023
Date

Kirk C. Downey
Kirk C. Downey
County Attorney
Washington County, Maryland

IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

JUSTIN HOLDER *Plaintiff* v. BOARD OF COUNTY COMMR'S OF WASHINGTON COUNTY, *et al.* *Defendant(s)*	* * * * * * * * * *	CASE NO.: C-21-CV-23-000016

* *

OPPOSITION TO DEFENDANT BOARD OF COUNTY COMMR'S OF WASHINGTON COUNTY'S AND KIRK C. DOWNEY, ESQ.'S SECOND MOTION TO DISMISS OR SUMMARY JUDGEMENT - HEARING REQUESTED

COMES NOW Plaintiff, Justin Kyle Holder, in proper person, and files this Opposition to Defendant Board of County Commissioners of Washington County's and Kirk C. Downey, Esq.'s Second Motion to Dismiss or Summary Judgement, and states:

INTRODUCTION

Plaintiff, Justin Kyle Holder, ("Mr. Holder") has sued the Defendant Board of County Commissioners of Washington County's and Kirk C. Downey, Esq.'s, (the "County") for actual and statutory damages in indisputable violations of the Maryland Public Information Act, (the "MPIA" or "Act"). The County, on June 15th 2023, has moved this Court to Dismiss Plaintiff's Complaint, filing a Memorandum of Law in support of its Motion to Dismiss or, in the Alternative, Motion for Summary Judgment, (the Memorandum referred to herein as the "MTD").

The County alleged the Plaintiff's Complaint fails to state a claim. However that allegation is unsupported by the contents of the MTD, and the County's position lacks merit. Indeed, the 30 Exhibits the County filed with its MTD, provide ample support of the

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veracity of the factual allegations in Plaintiff's Complaint. Thus, there is no dispute of fact that Mr. Holder is entitled to the relief he seeks in his Complaint. Mr. Holder incorporates his March 17th 2023 "Supplemental Opposition To Defendant's Motion for Summary Judgement" as fully stated herein by reference, withdrawing the argument that the County has failed to provide the proper affidavit in accordance with Md. rule 2-501(a).

The County attempts to distract this court, alleging Plaintiff's Complaint is an "attempt to break the world record for most substantive material omissions and/or misrepresentations contained in a pleading."[1] "A pleading shall contain only such statements of fact as may be necessary to show the pleader's entitlement to relief" *Rule 2-303 - Form of Pleadings, Md. R. Civ. P. Cir. Ct. 2-303.* Moreover, Plaintiff has no obligation to place impertinent and/or irrelevant extraneous matter before this court, (including settlement discussions), in furtherance of the County's frivolous attempt to procreate a factual dispute.[2]

Plaintiff's Complaint, unequivocally states a claim demonstrating the County, willingly and knowingly, violated the clear letter of the law, entitling him to relief. *See* Plaintiff's March 16th 2023 Motion for Summary Judgement (the "MSJ"), incorporated herein by reference. There is no genuine dispute of material fact that the County denied applicant Justin Holder's request to inspect or copy a public record in accordance of MD. General Provisions Code Ann. § 4-203 ("GP § 4-203"); and that denial "may not be considered the result of a bona fide dispute", *see* MD. General Provisions Code § 4-203(b)(3). The County's MTD should be denied and Mr. Holder's MSJ should be granted.

---

[1] The County fails to acknowledge, Plaintiff's Amended Complaint provides the complete factual history of the additional public information request, the County brought into controversy, just days before a June 2nd 2023 hearing. *See* Amended Complaint ¶¶ 18-29.

[2] It is abundantly clear over the County's 30 exhibits, (including inadmissible offers to compromise), that all along the County acted in bad faith, attempting to confuse Plaintiff with inappropriate and frivolous citations of Maryland law and ambiguous answers, *eg.* "***If*** the county" has the documents.

E. 223

The County's MTD is demonstrative of the County's pattern of behavior in walling off Mr. Holder from the Public Information the MPIA entitles him to inspect., with the least cost and delay possible. The County has now raised their bullying and intimidation tactics to a new level, with a frivolous and vexatious, request for sanctions.

MR. HOLDER'S RIGHT TO INSPECTION OF RECORDS WITH THE LEAST COST AND DELAY POSSIBLE

The MPIA is based on the principle that public knowledge of government activities is critical to the functioning of a democratic society; that a Government of the people, by the people, and for the people must be *open* to the people. Att'y Gen., Maryland Public Information Act Manual, Preface (17th Ed. 2022) (emphasis in original). The MPIA's overarching principle, as its title suggests, is meant to encourage and facilitate *public* access to *information* in the hands of government. To that end, the spirit of the MPIA "'establishes a public policy and a general presumption in favor of disclosure of government or public documents.'" *Office of Governor v. Washington Post Co.*, 360 Md. 520, 544 (2000) (quoting *Kirwan v. The Diamondback*, 352 Md. 74, 80-81 (1998)); *see also Comptroller of Treasury v. Immanuel*, 216 Md. App. 259, 265, 85 A.3d 878 (2014) ("The [PIA] grants the public the right to inspect public records in a way that favors public access."). Thus, as a general matter, Courts err on the side of disclosure and, for the same reason, interpret and apply disclosure exceptions narrowly. *Fioretti v. Maryland State Board of Dental Examiners*, 351 Md. 66, 77, 716 A.2d 258 (1998).

In the case at bar, Mr. Holder has sued the County for their repeatedly and undisputed violations of the Act. This suit furthers Mr. Holder's right to demand transparency from his local government and officials.

THE COUNTY'S REQUEST FOR SANCTIONS IS AN INTIMIDATION TACTIC, DESIGNED TO CHILL MR. HOLDER'S RIGHT TO INSPECT PUBLIC RECORDS

The County's request for sanctions is obviously an intimidation tactic. If the County's request for sanctions had merit, the County would have included the affidavit required under Md. Rule 1-341(b). The County did not include any of that information, because its request is frivolous.[3] For that reason alone the Court should deny the request.

Mr. Holder has all the justification he needs in GP § 4-203. There is no genuine dispute of material fact that the County did not answer four out of five of the MPIA request in 30 days. There is no genuine dispute of material fact, the County did not send a letter regarding fees in 10 days in all five request. Under the clear letter of the law in GP § 4-203, the County's denial can not be the result of a bonafide dispute.

Moreover, the County has no good faith basis to charge Mr. Holder any fees, when it failed to send the 10 day letter. *See Maryland Public Information Act Manual (17th ed., July 2022) Appendix H-3* at 3(C) *("*If there is a reason why the search or review of the records will take more than 10 working days, send the requester a letter or email *within that 10-day period*

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[3] The County has not made a request to the Ombudsman to mediate any of the claimed vexatious or frivolous MPIA request, although the Ombudsman offer this very assistance to the custodian. *See* MD. General Provisions Code § 4-1B-04(a)(9). In fact, the County has went so far as to Petition the court for a "MOTION TO STAY/PROHIBIT JUSTIN HOLDER'S MARYLAND PUBLIC INFORMATION ACT REQUESTS TO WASHINGTON COUNTY" requesting:

> "That this Court issue an order staying Mr. Holder's presently pending Maryland Public Information Act requests to the County, until the above referenced discovery/overall stays have ended; and ***That this Court issue an order prohibiting Mr. Holder from making additional requests under the Maryland Public Information Act to the County***", see Ex. A (the "petition for injunction") at p. 7.

Mr. Holder answered the County's petition for injunction, placing it at issue, *see* Ex. B. The record in *Young v Holder et al.,* case C-21-CV-20-371, reflects that the County did not appear at trial to avail themselves of the relief requested in its petition, although it had the opportunity to litigate that issue to conclusion. The Court in *Young v Holder et al.,* denied the County's petition for injunction.

explaining the reason for the delay, the time needed to respond, and an estimate of the range of fees that might be charged.") (emphasis in original). The County was in default of their obligations under the MPIA and Mr. Holder filed suit, as he is entitled to by law. The County's request for sanctions lacks merit.[4] To be sure, Mr. Holder discusses each of the five MPIA request subject to this instant complaint, in more detail. *See* §§ I through V, *infra.*

I. TAKING A PHOTOGRAPH OF THE COUNTY'S *EXISTING* COMPUTER DIRECTORY/INDEX IS NOT COMPILING A NEW RECORD

Mr. Holder requested correspondence in between the County and its property owners, *see* Am. Complaint at ¶8 (the "Civil War Trail Request") On On Fri, Jan 7, 2022 at 3:42 PM, Rachael McCarty (County Attorneys Office) advised Mr. Holder "As soon as we are able to obtain all the records you seek, we will promptly provide them." *See* MTD EX. 4 at p. 1. 47 days after making the request, on Thu, Jan 27, 2022 at 8:07 AM, Kevin Karpinski, Esq., ("Mr. Karpinski") writes back in blatant violation of GP § 4-203 attempting to procreate a dispute:

> "It has been determined that there are thousands of responsive documents. Under the circumstances, we can proceed in one of two methods. You can make a deposit of $500 and the County will continue to work on locating and copying the responsive documents. In the alternative, you can narrow the request so that it is not so voluminous." *See* MTD Ex. 6 at p. 1.

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[4] Mr. Holder further objects to the County's attempts to introduce settlement discussions into the record, that should not be admissible. *See* Md. Rule 5-408. In any of the correspondence related to the subject matter of the complaint, Mr. Holder made expressly clear a) he did not waive his right to file suit; b) the County was in default of its obligations under *inter alia* GP 4-203; and c) further correspondence was an act of good faith to resolve the matter, without the court. The County's attempts to bully Mr. Holder with his good faith efforts, or somehow mischaracterize the communications as a factual dispute, is made in bad faith. There is no dispute of fact, the County knowingly and willingly did not send a letter in 10 days, respond to the request in 30 days or produce the records that are not privileged or otherwise exempted from disclosure. The County's request for sanctions is groundless, meritless and frivolous, serving to bolster Plaintiff's Claims.

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In response, Mr. Holder made his position expressly clear "Without waiving any of my rights I will discuss the continued violation of the MPIA in good faith,"[5] *Id.* Mr. Holder kept the County informed of the rights he was not waiving in GP § 2-403. *Id.* At p. 2.

> However, in good faith Mr. Holder was:
>
> "certainly willing to target [his] search, and will do so expediently upon production of a list of the total responsive records, please provide: a) The initial form letter sent. b)The List of recipients to the initial letter. c) The list of responses received by the county. Upon review of that information I will promptly retarget and narrow my search to one that is efficient and manageable." *Id.*

Having no response from the County, on Tue, Feb 8, 2022 at 8:53 AM, Mr. Holder wrote back to Mr. Karpinski "It has been 10 days and I have not gotten any response from the agency or its representatives and assigns. I write to kindly remind the County of its default of obligations under the Maryland Public Information Act and respectfully request redress of same." *Id.* At p. 3. On March 14th 2022, (93 days after his request), Mr. Holder becomes aware that on January 26th 2022, Andrew Eshleman offered to "load it on a flash drive. That would be several dollars for that." *See* MTD Ex. 7 at p.1 & 3.

Finally to add insult to injury, on April 22nd 2022 (142 days after the initial request), Mr. Karpinski rights back with a frivolous allegation that taking a photograph or screenshot of the directory, where the files are stored, would be "compiling a new record".[6] *See* MTD Ex. 9 at p. 1. The County's bad faith has become impossible by now. Every file cabinet in the

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[5] Mr. Holder objects to the County's inclusion of an offer to compromise under Md Rule 5-408.

[6] The County has conceded its reliance on *Comptroller of Treasury v. Immanuel*. 216 Md. App. 259, 85 A.3d 878 (2014) "provides no guidance as to the present situation" *see* the County's Memo in Opposition to Mr. Holder's MSJ at p. 9. Moreover, the County failed in its attempt to chill Mr. Holder's rights by its misrepresentations. *See* MTD Ex. 10 (Mr. Holder's response to the County's April 13th 2022 letter relying on *Comptroller of Treasury v. Immanuel supra,* is incorporated herein by reference.) Mr. Holder will not spill any more ink on the County's inappropriate citation of law.

county has an index, each book has a table of contents. Does government function with a pile of unindexed, papers shoved in sock drawers? Thus, the County can not and will not support its ridiculous position that taking a screenshot of the computer directory, in a good faith effort to narrow a search is somehow compiling a new record. Clearly the directory exist on the hard drive, and clearly Mr. Holder is entitled to take a photograph of it. *See* GP § 4-205(b). (Must provide applicant access to the public record to take a photograph.)

Alternatively, even if this court were to accept the County's absurd attempt to justify its knowing and willful denial, Mr. Holder has not waived his rights to sue on the request, and had no obligation to narrow the search in the first place.

It is crystal clear from the County's malicious conduct, misrepresentations, unreasonable delay and groundless positions, in the Civil War Trail Request, exactly what Mr. Holder has suffered through in furtherance of his right to inspect Public records with the least cost and delay possible.

II. ANSWERING "*IF THE RECORD EXIST*", INVITES SUIT. HOW COULD DECLINING THE FBI'S ASSISTANCE INTERFERE IN AN INVESTIGATION?

Mr. Holder made a request for records "requesting any evidence or communications that the County DECLINED/REFUSED/DENIED the assistance and/or help of the US GOVERNMENT IN recovering the money and/or data; *I do not want any communications in which the County accepted the assistance of the US GOVERNMENT*." (emphasis added) *See* MTD Ex. 24 at p. 1. Prior to the 30 day deadline, Mr. Holder wrote to the County "to remind the Honorable Custodian of its obligations to the Public in respect to the MPIA. I am

currently tracking 4 MPIA's that have not been resolved, all 4 of being of grave public interest". *Id.* Having no response after 31 day, Mr. Holder filed suit.

Contemporaneously with Mr. Holder filing suit, Jason Parkins, Esq. ("Mr. Parkins"), wrote to Mr. Holder explaining that "***If any documents responsive to your request exist***..." they would be part of an alleged investigation. *Id.* In any account, Mr. Parkins answer came 31 days after the initial request, and no 10 day letter was sent out to Mr. Holder, the request was unlawfully denied in accordance of GP § 4-203. *Id.*

The import of Mr. Parkins response is he said "***if***". The MPIA is not a game of hide and seek, and "if the records exist" is in no way, shape or form a lawful denial of a records request. *See Glass v. Anne Arundel County*, No. 20, September Term, 2016 (Md. May 25, 2017), generally. *See also Maryland Public Information Act Manual (17th ed., July 2022) Appendix C-1* (A Sample denial letter disclosing responsive records, attached hereto and incorporated herein by reference as *Ex. C*) When the County answers a records request with "if the records exist", the County invites a lawsuit for unlawful denial of a records request.

How releasing the correspondence denying the assistance of the United States Government could interfere with an investigation is hard to imagine. "Because 'courts will simply no longer accept conclusory and generalized allegations of exemptions,' the first burden on an agency which seeks judicial approval of a claim of exemption is to provide 'a relatively detailed analysis in manageable segments'." *Cranford v. Montgomery County*, 300 Md. 759, 778 (1984) (quoting *Vaughn v. Rosen,* 484 F.2d 820 (D.C. Cir. 1973), *cert. denied,* 415 U.S. 977, 94 S.Ct. 1564, 39 L.Ed.2d 873 (1974)." The County should produce a "Vaughn Index" with a list of the responsive documents, the name of the parties to the records and a description

of the contents and priveledge asserted. If these records did not exist, the County would have simply responded that no records matching Mr. Holder's parameters exist.

III. THE COUNTY BREACHED ITS' NOVEMBER 14TH 2022 AGREEMENT, AND INSTEAD OF PRESSING FORWARD, TYPING PLAINTIFF's EMAIL AND PRESSING SEND, THE COUNTY SPENDS ITS RESOURCES DEFENDING SUIT

The "zip file request" is discussed at MTD p. 19. On November 14th 2022 the County made a good faith agreement to forward the email from a) B. Andrew Bright or b) Joshua O'Neal; to Mr. Holder. *See* attached Ex. D, incorporated herein by reference at p. 3:1-6.

> (MR. HOLDER: Okay. Hold on now. So, you're just going to forward the e-mail from Josh O'Neal to me; is that basically what you were thinking when you said produce it, just whatever Josh sent to Andy, you were just going to forward that?
>
> MR. KARPINSKI: Yes.') (the "November 14th 2022 Agreement")

Generally, Mr. Holder has been requesting the County disclose certain *Brady* evidence, including alleged wiretapping, for several years. *See* R case C-21-CV-21-097 and C-21-CV-21-116. The record in case C-21-CV-21-097 reflects that apparently an email record Mr. Holder requested, sent from the Town of Keedysville to Washington County employee, (and Mr. O' Neal's counterpart at the Sheriff's Department), Barry Levey, was deleted or lost. Additionally, the record in case C-21-cv-20-097 reflects, that immediately upon filing an Amended Complaint in July 2022, the County released what it represented was the entire email conversation related to the August 3rd email from Joshua O'Neal to B. Andrew Bright, subject of the zip file request. The County also alleges it has previously produced the files contained within the "zip file". *See* Ex D p. 2:13-22. Thus, the County would not have any

priveledge to assert, or undue burden, in having Joshua O'Neal simply open the email, press forward, type in Plaintiff's email and press send. Instead the County forces Plaintiff to court.

The County has no good faith business justification to the taxpayers, in its conduct and expense of outright refusal to comply with the express terms of our November 14th 2022 agreement. All the County is required to do is have Mr. Joshua O'Neal open the email, press forward, type in Mr. Holders email address and press send. Instead the County files dozens of pages of vexatious Motions practice, to avoid the 15 second task. The County has not asserted any priveledge, or exemptions, as to the email. Indeed, the County claims to have produced the email in pdf form and the zip file previously. Mr. Holder, and the public are very curious as to why the County conducts business in this resourceful manner. Mr. Holder demands specific performance with the November 14th 2022 agreement, and this court has the authority to order the same. The County breached its good faith agreement, with no explanation. Mr. Holder has justification to sue on that principle alone.

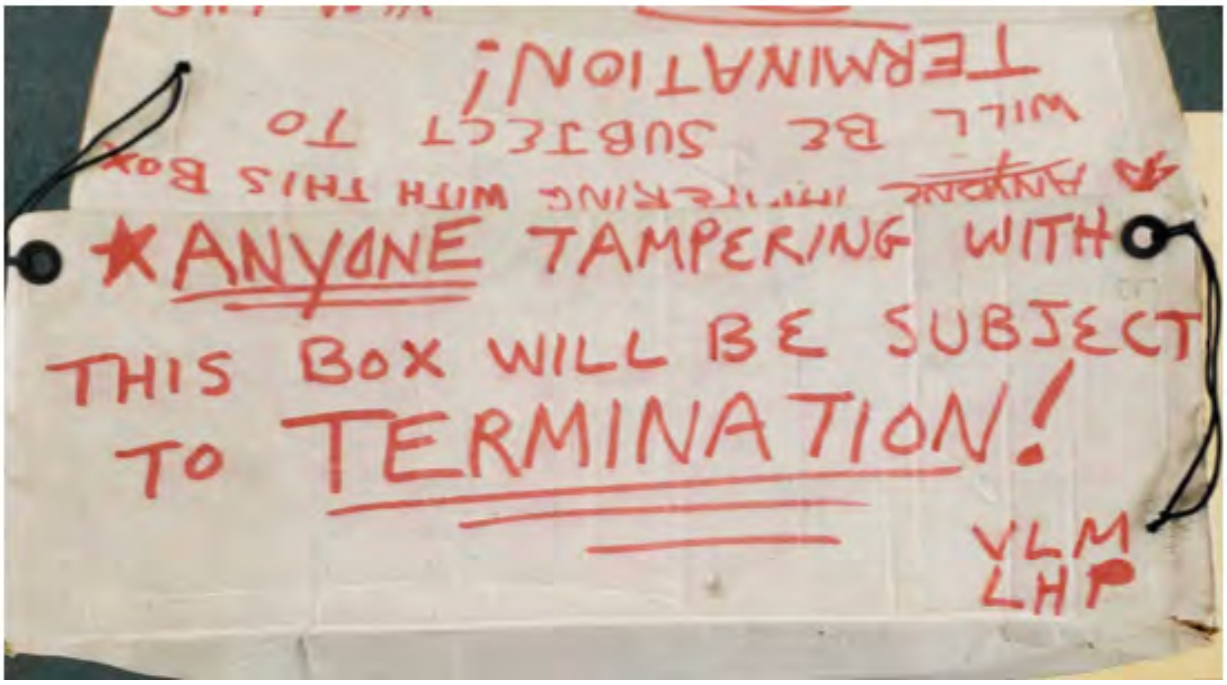
IV. THE PERMANENT RECORDS THE COUNTY MUST HAVE LOST

The County represents to the State of Maryland the sewer agreements are permanently maintained. *See* MTD pp. 13-14. The County apparently has the sewer agreements for 15 other subdistricts in its custody. *See* MTD pp. 14-15. It has been Mr. Holder's experience that the County just does not search well unless it is sued, or put on notice of intention to sue. *See* R, Case C-21-CV-21-000097 . (The County released records after Mr. Holder filed suit to obtain the documents.) Mr. Holder made at least a dozen, or more request, before the County produced the boonsboro-keedysville-sharpsburg 201

facilities plan. It has been Mr. Holder's experience the County uses ambiguous language and references in its answers, obscuring and frustrating Mr. Holder's request.

On July 10th 2020, Mr. Holder made an MPIA request for "The boonsboro-keedysville-sharpsburg 201 facilities plan." *See* Ex. E at #3. On July 21st 2020, the County represented to Mr. Holder "the County has been unable to locate the 201 facilities plan despite engaging in a search." *See* Ex. F at p. 2. Upon discovery that the County had "long term storage" it may not have searched, on August 9th 2020, Mr. Holder again requested the County search for "The Boonsboro Sharpsburg keedysville 201 facilities plan." *See* Ex. G. On September 2nd 2020, the County again represented "In response to your request, the County has been unable to locate the 201 facilities plan despite engaging in an extensive search." *See* Ex. H. Mr. Holder, not satisfied the County was searching, persisted with his request to inspect the public records he sought. On January 6th 2021, Mr. Holder located the Boonsboro Sharpsburg keedysville 201 facilities plan, in the County's possession. *See* Ex. I. *See also* Ex. J, Ex. K & Ex. L. (Letters referencing the Boonsboro Sharpsburg keedysville 201 facilities plan, in the possession and control of the County.)

Mr. Holder made request to the County to determine if anyone was "tampering" with the box of sewer documents where he located the Boonsboro Sharpsburg keedysville 201 facilities plan, (the "sewer box"). See MTD Ex. 18 & Ex. 19, generally. Mr. Holder was curious if the County had ever "terminated" any employee, related to the sewer box. The sewer box can be identified by the warning, written with red sharpie marker, on its top: "*__ANYONE__ TAMPERING WITH THIS BOX WILL BE SUBJECT TO __TERMINATION!__", *see* true and accurate photograph of the "sewer box" *infra. See also* Ex. M, (the "warning").



Mr. Holder has a colorable claim, that obtaining the records would require filing suit. This is because the warning on top of the sewer box, the County's representation the sewer agreements are permanently retained, Mr. Holder's previous experience with the Boonsboro Sharpsburg keedysville 201 facilities plan, Mr. Holder's previous experience in case C-21-CV-21-097 and Kirk Downey, Esq.'s November 25th 2020 email description of the iterations between Mr. Holder and the County as "thrust and parry". *See* Amended Complaint ¶ 17. To this day, the County has not proffered an affidavit, or any other testimony under oath, that the County does not have a copy of the Permanent records. *See* MTD Ex. 30. Mr. Holder believes that the County does have the records and will produce them by order of this court. In the face of the above evidence of the County's bad faith, knowing and willful denials, Mr. Holder certainly had justification to file suit. The County's course of conduct in unreasonable delay, and production of documents after suit is filed, has crystalized its policy of unlawful behavior related to the Act.

V. $7000 TO INSPECT AND COPY A 30 YEAR OLD SEWER AGREEMENT?

"The County has arbitrarily and capriciously ignored Mr. Holder's good faith efforts to narrow his search in its denial of Mr. Holder's right to inspect or photocopy public records described in the Maugansville sewer agreement request." Amended Complaint ¶20. *See also* Amended Complaint ¶¶ 21 & 22. (The County did not send a 10 day letter requesting fees in accordance with GP § 4-203. The requested records can not be privileged or confidential, because the county represents to the State of Maryland, Dept. of General Services that the records are public and are to be transmitted to the Maryland State Archives.)[7] *See also* MSJ Ex. 1 at ¶3 (Retention Schedule C872. Sewer agreements are to be retained permanently and then transferred to Maryland State Archives.)

Mr. Holder Amended his Complaint after the County, (in a "midnight filing" on the eve of hearing) filed an affidavit adding factual evidence of the instant request to the record. *See* MTD Ex. 30 and *compare* to R May 30th 2023 "Line" and "supporting document".[8] In regard to the Maugansville sewer agreement request, the County did not send the 10 day letter in accordance of GP § 4-203(b)(2), thus, the denial can not be the result of a bonafide dispute in accordance of GP § 4-203(b)(3). However, GP § 4-203(a) includes the terms "promptly" or "immediately or within a reasonable period" but no longer than 30 days. Whether the County has acted "promptly" or "immediately or within a reasonable period", requires this court to make a factual determination. Mr. Holder contends there is no dispute

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[7] Mr. Holder is not certain, but in his experience researching documents contained at the Maryland State Archives, those records are all open for public inspection. Mr. Holder has also inspected records at the National Archives, which sometimes are privileged or confidential records, that Mr. Holder must request the US Attorney or agencies review, prior to his inspection.

[8] The County had requested Summary Judgement in accordance of Md. Rule 2-501(a), but lacked an affidavit in accordance with Md. Rule 2-501(c), until the "midnight filing" on May 30 2023. R

of that factual determination, because the County did not act “promptly” or "immediately or within a reasonable period”, upon review of the evidence before this court.

MD. General Provisions Code § 4-206 (a)(3) “‘Reasonable fee' means a fee bearing a reasonable relationship to the recovery of ***actual costs incurred*** by a governmental unit.” (emphasis added) MD. General Provisions Code § 4-206 (b)(2) “The staff and attorney review costs included in the calculation of ***actual costs incurred*** under this section ***shall be*** prorated for each individual’s salary and ***actual time attributable*** to the search for and preparation of a public record under this section.” (emphasis added) Mr. Holder has not requested this court review the fee assessment by the County, because it is Mr. Holder’s position that the County has denied his request to inspect Public records that is not a bonafide dispute in accordance with GP § 4-203. However, Mr. Holder would argue the fee assessment is unreasonable by law in GP § 4-206. The fee assessment provides this court evidence of the bad faith and behavior of the County, in walling off Mr. Holder, when answering his MPIA request(s).

In the County’s denial letter, Mr. Karpinski concluded: “You may refer any concerns about this correspondence to the Public Access Ombudsman pursuant to GP § 4-1B-01 *et seq.* Additionally, do not hesitate to contact my office in the event you wish to narrow the scope of your request.” *See* Ex. N at p. 3. Mr. Holder did just as Mr. Karpinski instructed and made a request to the Public Access Ombudsman. Whereupon on or before June 22nd 2023 “the County respectfully declined to enter mediation in an attempt to resolve the dispute.” *See* Ex. O at p. 2. The County leaves Mr. Holder no choice but resort to the court to protect his right to inspect public records with the least cost and little delay as possible.

Mr. Holder is only requesting 1 document, and does not understand how he could "narrow" his request any further as Mr. Karpinski suggested. Moreover, when Mr. Holder narrowed his search to just the Maugansville sewer agreement, the County baldy alleged Mr. Holder attempts to "circumvent the fee estimate" of over $7000. *See* Ex N at p. 2. "Mr. Holder has not made fifteen separate requests for all 15 sewer agreements the County alleges it has in its custody." Amended Complaint ¶19. *See also* MTD Ex. 20 at pp. 1-2.

The County's bald allegation lacks proper foundation. One reasonable inference to be made in favor of non-movant, is Mr. Holder only wants to inspect the Maugansville sewer agreement, so he may determine if the contractual language could be similar in the other sewer agreements. Until Mr. Holder is able to inspect the agreement, Mr. Holder is unable to determine his next steps. For the County to make such a prediction is premature and unfair to Mr. Holder. In the spirit of the MPIA in full disclosure with narrow exemptions, the County's bald allegation is untenable. The County must not be given opportunity to rely on the straw men it creates, without a factual basis to do so.

VI. THE COUNTY'S REQUEST FOR SANCTIONS IS FRIVOLOUS

[T]he test for determining lack of substantial justification, which should be applied in the instant case, is whether [the party] had a reasonable basis for believing that the claims would generate an issue of fact for the fact finder. This test has been utilized by the Court of Special Appeals in several cases. For example in *Needle v. White*, 81 Md. App. at 476, 568 A.2d at 863, the Court of Special Appeals defined substantial justification as "a reasonable basis for believing that a case will generate a factual issue for the fact-finder at

trial." *See also Newman v. Reilly,* 314 Md. 364, 550 A.2d 959 (1988), where this Court stated that, to constitute substantial justification, the parties position should be "fairly debatable" and "within the realm of legitimate advocacy." *Id*. at 381, 550 A.2d at 967-68. Additional guidelines are also found in the comment to Rule 3.1 of the Maryland Lawyers' Rules of Professional Conduct, which states that an action is frivolous if "the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for extension, modification or reversal of existing law."

In *Fowler v. Printers II,* 89 Md. App. 448 (1991), the Court of Special Appeals explained:

> ... although recognizing that "ordinarily, a trial judge faced with a Rule 1-341 motion should make an explicit determination" as to the existence of "bad faith and lack of substantial justification," we have upheld a trial court's summary denial of a request for sanctions after concluding, upon review of the record, that there was **no basis** for them. *Century I*, 64 Md. App. at 115-17, 494 A.2d 713.
>
> * * *
>
> ... if the Rule 1-341 motion is **patently groundless**, *i.e.*, if there is **no basis** for granting it apparent from the record, the trial judge need not issue any findings."

In *Blitz v Beth Isaac*, 115 Md. App. 460 (1997), the Court of Special Appeals revisited the concept, noting:

> A trial court need not make factual findings in connection with every Rule 1-341 motion. Rather, if the motion is "patently groundless," i.e. where no basis for granting sanctions appears in the record, the trial court may summarily deny the motion without issuing factual findings. *Fowler v. Printers II, Inc.*, 89 Md.App. 448, 487, 598 A.2d 794 (1991), *cert. denied*, 325 Md. 619, 602 A.2d 710 (1992). Id.

There is no dispute of fact the County denied Mr. Holder's request in accordance of GP 4-203. The factual determination of the extent of the County's bad faith in its knowing and willful denial, will weigh on the courts determination of damages. The County has no

good faith basis to request sanctions from Mr. Holder. Mr. Holder's conduct is within the realm of legitimate advocacy and Mr. Holder is provided a remedy under the MPIA when the government interferes with his right to inspect Public records, with as little cost and the least delay as possible. The County's request for sanctions should be denied.

OPPOSITION TO THE MOTION TO DISMISS OR SUMMARY JUDGEMENT

Approximately 22 of the 33 page MTD are a replica of the County's February 20th 2022 Motion to Dismiss or Summary Judgement. Mr. Holder incorporates his Opposition(s) to the same, (withdrawing the argument regarding the required affidavit in accordance with Md. Rule 2-501(a)), as if fully stated herein by reference.

The MTD fails to argue any grounds for dismissal, or even include the words "fails to state a claim". That is because the County is aware Mr. Holder's Complaint does state a claim and Mr. Holder is entitled to relief. The County's MTD is actually a request for Summary Judgement. The County concluding Mr. Holder's unlawfully denied MPIA request are moot, which "clearly leaves this Court without the ability to fashion an effective remedy" MTD p. 29. The County is mistaken, this court can order the release of the documents. This court can order the County to specifically perform on the November 14th 2022 agreement, and forward the "zip file request" email. This court can order the County to allow Mr. Holder to obtain a photograph of the directory of the Civil War Trail letter, or order production of the 1 gigabyte of data in total. This court can order production of the Maugansville sewer agreement. This court can order the County produce a "Vaughn Index", provide in *camera review,* of the FBI communications request, or order their production in

entirety. This court could order the County to correct its representations to the State related to the Permanent records request, or provide affidavit under oath that the record has been lost. This court can award Mr. Holder statutory damages for the knowing and willful denial of Mr. Holder's MPIA request. This court can order whatever other relief Mr. Holder has requested in his Amended Complaint, or it deems fair and just. Mr. Holder's Complaint is not moot.

The County characterizes Mr. Holder's Complaint as an "attempt to break the world record for most substantive material omissions and/or misrepresentations contained in a pleading", MTD p. 1. The County submits 30 Exhibits in support of its instant motion, that when compared to the allegations in Mr. Holder's Complaint, prove the pleadings all true! [9] Indeed, the County did not argue that Mr. Holder's Complaint fails to state a claim, thus since the County's exhibits prove the veracity of Plaintiff's Complaint, Mr. Holder's MSJ should be granted. To the extent this court will admit the evidence of settlement offers the County's MTD references, that evidence supports the good faith Mr. Holder has demonstrated in retargeting his request to narrow the scope and/or working with the custodian to inspect the public records he has politely requested. Mr. Holder, would kindly request the County provide its grounds and authorities that require a Plaintiff to include inadmissible, settlement discussions in his pleadings, to procreate a factual basis, the County can foist before the court as a defense. Plaintiff does not believe those grounds and

[9] Mr. Holder will not burden this court with a 30 page response to the County's 33 page Motion to Dismiss, however Mr. Holder will take 10 minutes during oral arguments to point the court to each exhibit the county filed that supports the veracity of Mr. Holder's Complaint. Thus, since the County failed to make a substantive argument for its request the complaint be dismissed for failure to state a claim; and its exhibits prove the factual allegations in the complaint true, this court will agree, Mr. Holder is entitled to the relief requested in his Amended Complaint.

authorities exist, nor does any dispute of fact. The County has knowingly and willfully violated the Act, Mr. Holder has not waived his right to sue for the violation and Mr. Holder is entitled his records, fees and statutory damages. The County's MTD should be denied.

CONCLUSION

The County's MTD is an attempt to bait Mr. Holder into conceding its procreated factual dispute, that just does not exist. Mr. Holder's Complaint states a claim that affords him relief. Mr. Holder's Motion for Summary Judgement should be granted and the County's Motion for Summary Judgement should be denied. The County's request for sanctions is frivolous and an intimidation tactic. The County's crystalized policy of unreasonable delay, forcing the applicant to court must end!

REQUEST FOR A HEARING

Honorable Clerk,

Plaintiff kindly request a hearing in accordance with Md. Rule 2 - 311 (f), at a date convenient to the Honorable Court, on the Motion to Dismiss and Opposition thereto.

Respectfully submitted,

Justin K. Holder, *Pro Se*
308 West Chapline Street
Sharpsburg, Maryland 21782
(240) 356-2001

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of June, 2023, the foregoing Opposition to Defendant Board of County Commissioners of Washington County and Kirk Downey, Esq., Second Motion to Dismiss; or Summary Judgement was served via MDEC and thus served electronically upon all counsel/parties of record, served via US Mail to all other counsel/ parties requiring service not served by MDEC;

MDEC:

KEVIN KARPINSKI, #11849, CPF #9312150114
120 East Baltimore Street, Suite 1850
Baltimore, Maryland 21202–1617 - (410) 727-5000

Attorney for Defendant(s) Board of County Commissioners of Washington County; and Kirk C. Downey, Esq.

Justin K. Holder, *Pro Se*

JEFFREY YOUNG	*	IN THE
Plaintiff	*	CIRCUIT COURT
v.	*	FOR
JUSTIN HOLDER, et al.	*	WASHINGTON COUNTY
Defendants	*	Case No.: C-21-CV-20-000371

* * * * * * * * * * * * * *

MOTION TO STAY/PROHIBIT JUSTIN HOLDER'S MARYLAND PUBLIC INFORMATION ACT REQUESTS TO WASHINGTON COUNTY

Non-party THE BOARD OF COUNTY COMMISSIONERS FOR WASHINGTON COUNTY (the "County") by KARPINSKI, CORNBROOKS & KARP, P.A. and KEVIN KARPINSKI, its attorneys, respectfully requests that the Court issue an order staying Justin Holder's presently pending PIA requests to the County and to prohibit Mr. Holder from making additional PIA requests to the County and in support thereof, states the following:

1. This is one of the cases brought by or involving Mr. Holder that pertains to a property dispute between Mr. Holder, his neighbors and certain governmental entities. *See* Circuit Court for Washington County, Case Nos. C-21-CV-21-000420, C-21-CV-21-000130, C-21-CV-20-000430,[1] C-21-CV-21-000116 and C-21-CV-20-000371.

2. With respect to the Washington County Circuit Court Case No. C-21-CV-21-000420, the following has occurred:[2]

[1] That case was consolidated with Washington County Circuit Court Case No. C-21-CV-21-000130.

[2] The County is unaware of the extent to which the Court has issued any orders staying discovery or prohibiting Mr. Holder from obtaining discovery in those

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Exhibit A

a. On March 10, 2022, this Court entered orders granting the protective orders sought by several parties, including Lisa Estes and Susan Selby.

b. On April 7, 2022, this Court entered an order in which it stayed discovery in that case, noting that "Plaintiff [Mr. Holder] has engaged in significant discovery concerning multiple cases filed in this court and such discovery is, at times, unnecessary and overly burdensome."[3]

c. Although the County was previously a party to this litigation, also on April 7, 2022, the Court granted the County's Motion to Dismiss and entered an order dismissing the County from this matter without prejudice, after the County responded to the discovery requests Mr. Holder issued to the County.

d. On May 3, 2022, this Court entered an order in which it stayed the case and noted that the stay is in the best interest of judicial economy.[4]

---

cases aside from C-21-CV-21-000420 and C-21-CV-000097, because the County was not a party to those matters. Nonetheless, there are several protective orders in place in some of the cases outlined above prohibiting Mr. Holder from obtaining discovery from specific parties.

[3] On or about April 8, 2022, Mr. Holder filed an objection to several of this Court's orders—including the April 7th order staying discovery, which this Court denied.

[4] Mr. Holder filed an objection to the Court's order staying these proceedings that same day. On May 9, 2022, the Court issued an order denying Justin Holder's objection.

Exhibit A

3. Nonetheless, Mr. Holder has continued to make requests pursuant to the Maryland Public Information Act to the County, seeking materials that relate to the above referenced matters and/or could have or should have been sought during discovery in those matters.

4. Presently, Mr. Holder has made over eleven requests pursuant to the Maryland Public Information Act since mid-April of 2022. Mr. Holder has also made a multitude of communications to the County concerning fee estimates and other matters related to his Public Information Act requests in general within the same period. This has all occurred while Mr. Holder presently has a suit pending against the County regarding a prior denial of one of Mr. Holder's requests. *See* Washington County Circuit Court, Case No. C-21-CV-21-000097.

5. Mr. Holder is in the habit of utilizing the Maryland Public Information Act in a repetitive, duplicative and vexatious manner, and is now attempting to utilize the Maryland Public Information Act to circumvent this Court's orders regarding discovery.

6. Maryland Courts have made clear that the Maryland Public Information Act is modeled—in part—upon the Freedom of Information Act and that federal courts' interpretations of the Freedom of Information Act are persuasive in interpreting the Maryland Public Information Act. *See Mezu v. Morgan State Univ.*, 269 F.R.D. 565, 576 (D. Md. 2010) (commenting that "the [Maryland Public Information Act] is 'modeled on' the Freedom of Information Act"); *Blythe v. State*, 161 Md. App. 492, 513, 870 A.2d 1246, 1257–58 (2005).

7. Both the Freedom of Information Act and the Maryland Public

Exhibit A

Information Act are not intended to be used to supplement or circumvent discovery. *See Office of Attorney General v. Gallagher*, 359 Md. 341, 348, 753 A.2d 1036, 1040 (2000) (noting that "the Public Information Act 'was not intended to be a device to enlarge the scope of discovery"); *U.S. v. Weber Aircraft Corp.*, 465 U.S. 792, 802, 104 S. Ct. 1488, 1494 (1984) (commenting that "the FOIA could be used to supplement civil discovery. We have consistently rejected such a construction of the FOIA"); *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 153 (1989) (noting that the Freedom of Information Act "was not intended to supplement or displace rules of discovery"); *Faulk v. State's Attorney for Harford Cty.*, 52 Md. App. 616, 622, 451 A.2d 936, 940 (1982), *aff'd*, 299 Md. 493, 474 A.2d 880 (1984); *Brown v. FBI*, 658 F.2d 71, 75 (2d Cir. 1981) ("[t]he FOIA is not intended to be an administrative discovery statute for the benefit of private parties"); *Nix v. United States*, 572 F.2d 998, 1003 (4th Cir. 1978).

8. Several of Mr. Holder's Maryland Public Information Act requests to the County seek communications and/or other information pertaining to some of the parties, fact witnesses or expert witnesses involved in the cases cited *supra* at ¶¶ 1–2, including, but not limited to, Christine Morral, Mayor of the Town of Keedysville Kenneth Lord, Benjamin Estes, Frederic Frederick, Talley Kovacs, Esq., Department of Natural Resources Ranger Mary Ironside, Department of Natural Resources officer Cody Litton and others. All of these individuals are parties or non-parties that are involved in the above referenced cases brought by or against Mr. Holder. *See supra* at ¶ 1.

9. In attempting to utilize the Maryland Public Information Act in this

Exhibit A

manner, Mr. Holder is attempting to improperly utilize the Maryland Public Information Act process to circumvent the discovery orders issued by this Court and should not be permitted to do so.

10. Given that Mr. Holder's Maryland Public Information Act requests with the County are presently pending, if the Court declines to impose a stay upon those requests, it will best serve the interests of justice if the Court extends the time in which the County may respond to Mr. Holder's PIA requests to thirty days from the date of the Court's order regarding this motion.

11. In addition, Mr. Holder has made an unreasonable number of requests to the County pursuant to the Maryland Public Information Act. More specifically, since April of 2020, Mr. Holder has submitted well over **100** Maryland Public Information Act requests to the County. Given the sheer volume of requests made by Mr. Holder, it is apparent that Mr. Holder is utilizing the Maryland Public Information Act for vexatious purposes and only seeks to harass the County in making additional requests. This is particularly true here, where Mr. Holder has recently made PIA requests to the County that are only modified versions of previous requests and/or encompass documents that were previously provided by the County in response to such requests. Mr. Holder also seeks information pertaining to the Maryland Public Information Act suit filed by Mr. Holder against the County, which could have been obtained through discovery in that litigation.

12. With respect to the Maryland Public Information Act requests referenced in the above paragraph, the County has assessed fees to Mr. Holder

Exhibit A

in several instances and requested that he prepay those fees. In a majority of instances where the County requested prepayment of such a fee, Mr. Holder has sent a multitude of correspondences to the County suggesting that any fee estimates provided by the County are inappropriate and has threatened litigation at every step along the way.

13. Furthermore, Mr. Holder has also sent a litany of correspondences to the County—as well as the State—regarding the Maryland Public Information Act requests he made to the County. In making these correspondences to the County, Mr. Holder is in the habit of unilaterally establishing a deadline for some form of action by the County and requesting resolution by that date.

14. It is evident that Mr. Holder is attempting to utilize the Maryland Public Information Act against the County in a vexatious manner, through which he believes he can generate an endless amount of litigation against the County based on those requests. This was not the result contemplated by the Maryland General Assembly in enacting the Maryland Public Information Act and Mr. Holder's attempts to utilize the Act in this manner serve only to harass the County and negatively impact the public fiscally, given the amount of time the County has expended in tracking, coordinating, and responding to Mr. Holder's requests.

15. In sum, Mr. Holder has consistently attempted to utilize the Maryland Public Information Act in a vexatious and harassing manner and this Court should prohibit Mr. Holder from continuing in this course of conduct by entering an order prohibiting Mr. Holder from submitting additional Maryland

Exhibit A

Public Information Act requests to the County.

WHEREFORE, based on the foregoing, the County requests the following:

1. That this Court issue an order staying Mr. Holder's presently pending Maryland Public Information Act requests to the County, until the above referenced discovery/overall stays have ended; and

2. That this Court issue an order prohibiting Mr. Holder from making additional requests under the Maryland Public Information Act to the County;

3. That if this Court denies the County's motion, the Court should issue an order extending the time in which the County may reply to Mr. Holder's pending requests to thirty-days from the date of any such order; and

4. Any other relief as the cause may require.

Respectfully Submitted,

KARPINSKI, CORNBROOKS & KARP, P.A.

By: /s/ Kevin Karpinski

KEVIN KARPINSKI
AIS #9312150114
120 East Baltimore Street
Suite 1850
Baltimore, Maryland 21202–1617
410-727-5000
kevin@bkcklaw.com
Attorneys for Washington County Board of County Commissioners

Exhibit A

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of June 2022, a copy of the foregoing was electronically filed, with notice to:

Justin Holder
308 West Chaplin Street
Sharpsburg, Maryland 21782
Pro se Defendant

Brandy Ann Peeples, Esquire
47 East All Saints Street
Frederick, Maryland 21701
Counsel for Deena Holder

Robert Lorenzo Kline, III, Esquire
Kline Law Group LLC
73 North Main Street
Port Deposit, Maryland 21904
Counsel for Uncle Eddies Brokedown Palace, LLC

R. David Pembroke
21 Summit Avenue
Hagerstown, Maryland 21740
Counsel for Plaintiff Jeffrey Young

/s/ Kevin Karpinski
Attorneys for Washington County Board of County Commissioners

Exhibit A

IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

JEFFREY YOUNG	*	
	*	
Plaintiff	*	
v.	*	
	*	
JUSTIN HOLDER, Et Al	*	
	*	
Defendant(s)	*	
	*	
And	*	CASE NO.: C-21-CV-20-000371
	*	
Washington County Board of County Commissioners	*	
	*	
	*	
3rd Party Plaintiff/Intervenor	*	
	*	
v.	*	
	*	
Justin Holder	*	
Defendant		

* *

ANSWER TO WASHINGTON COUNTY BOARD OF COUNTY COMMISSIONER'S CLAIM IN EQUITY TO ENJOIN DEFENDANT JUSTIN HOLDER FROM CONSTITUTIONAL RIGHT'S OF REDRESS

COMES NOW Defendant, Justin Holder, in proper person, in Answer to Washington County Board of County Commissioner's Claim in Equity to Enjoin Defendant Justin Holder from Constitutional Right's of Redress, states as follows:

DEFENSES

1. 3rd Party Plaintiff/Intervenor has failed to state a claim upon which relief can be granted.
2. 3rd Party Plaintiff/Intervenor's claims are barred by Laches.
3. 3rd Party Plaintiff/Intervenor's claims are barred by Estoppel.
4. 3rd Party Plaintiff/Intervenor's claims are barred by the doctrine of Waiver.

Justin K. Holder

Pro se Litigator

308 W. Chapline St.
Sharpsburg, MD 21782
t: (240) 356-2008
holder2004@Gmail.com

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Exhibit B

5. 3rd Party Plaintiff/Intervenor's claims are barred by the failure to join parties under Md. Rule 2-211.
6. 3rd Party Plaintiff/Intervenor's claims are barred by the lack of necessary parties.
7. 3rd Party Plaintiff/Intervenor's claims are barred by lack of jurisdiction. See adequate Remedy in Law *inter alia* MD. General Provisions Code Ann. § 4-101 *et seq.*
8. 3rd Party Plaintiff/Intervenor's request is *ultra vires* of the 1st, 4th, 5th, 6th, 8th and 14th Amendments of the United States Constitution.
9. 3rd Party Plaintiff/Intervenor's request is *ultra vires* of Article 1,2,3,6,7,8,10,12,16,17,18,19,24 and 40 of the Maryland Constitution.
10. 3rd Party Plaintiff/Intervenor's claims in equity are barred by the Clean Hands Doctrine.
11. 3rd Party Plaintiff/Intervenor's claims in law are barred by *in pari delicto.*
12. Defendant's right for redress lies solely in the discretion of the legislature.
13. Defendant challenges 3rd Party Plaintiff/Intervenor to find any jurisprudence that suggest the government is entitled to injunctive relief as to a citizen's constitutional right for redress.
14. The claim fails to state irreparable injury and therefore must be dismissed.

ANSWER TO THE ALLEGATIONS

In Answer to the specific allegations of the Claim, the Defendant states as follows:

13. Defendant admits the allegations contained in paragraph 1 of the Claim to the extent the case "pertains to a property dispute between Mr. Holder and his neighbors" and Denies the allegations to the extent any "governmental entities" are a party and demands strict proof thereof.

Justin K. Holder

Pro se Litigator

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t: (240) 356-2008
holder2004@Gmail.com

14. Defendant admits the allegations contained in paragraph 2-footnote 2 of the claim to the extent the County was only a party to the listed cases and protective orders were entered; and denies the lawfulness of the orders which were unjust, unfair and highly prejudicial.

15. Defendant admits the allegations in paragraph 2a, the orders were entered.

16. Defendant admits the allegations in paragraph 2b of the claim, the orders were entered and Denies the allegation to the extent they infer the Defendant has ever engaged in any "unnecessary" or "overly burdensome" discovery and demands strict proof thereof.

17. Defendant admits the allegations in paragraph 2c of the claim.

18. Defendant admits the allegations in paragraph 2d of the claim to the extent the order was entered and denies the order was lawful, just or in the interest of judicial economy and demands strict proof thereof.

19. Defendant admits the allegations in paragraph 2 footnote 3 of the claim.

20. Defendant admits the allegations in paragraph 2 footnote 4 of the claim.

21. Defendant admits the allegations in paragraph 3 of the claim that the Defendant has made lawful and proper request for redress in accordance with the Maryland Public Information Act and Defendant denies the allegations to the extent the request were "seeking materials that relate to the above referenced matters and/or could have or should have been sought during discovery in those matters." and Defendant demands strict proof thereof.

22. Defendant admits the allegations in paragraph 4 of the claim to the extent a request was made and denies the allegations to the extent the 3rd Party Plaintiff/Intervenor infers the request were lawfully answered or responded to and the Defendant demands strict proof thereof.

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Pro se Litigator

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jholder2004@Gmail.com

23. Defendant denies the allegations contained in paragraph 5 of the claim and demands strict proof thereof.

24. Defendant admits the allegations contained in paragraph 6 of the claim.

25. Defendant admits the allegations contained in paragraph 7 of the claim to the extent the "dicta" cited exist in Jurisprudence and Denies the allegations to the extent they infer any of Defendant's request were unlawful, in bad faith or unwarranted in his request for redress. Defendant further denies the allegations contained in paragraph 7 of the claim insomuch that any of the request made were germane to any of the litigation noted in paragraph 1 that is *sub judice* and the Defendant demands strict proof thereof.

26. Defendant admits the allegations contained in paragraph 8 of the claim to the extent some of the persons listed were subject of the records request and denies the allegations to the extent the request were germane to any litigation and demands strict proof thereof.

27. Defendant denies the allegations contained in paragraph 9 of the claim and demands strict proof thereof.

28. Defendant denies the allegations contained in paragraph 10 of the claim and demands strict proof thereof.

29. Defendant denies the allegations contained in paragraph 11 of the claim and demands strict proof thereof.

30. Defendant denies the allegations contained in paragraph 12 of the claim and demands strict proof thereof. Specifically Defendant has paid fees over $1000 to the 3rd party Plaintiff/Intervenor.

31. Defendant denies the allegations contained in paragraph 13 of the claim and demands strict proof thereof.

Justin K. Holder

Pro se Litigator

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jholder2004@Gmail.com

32. Defendant denies the allegations contained in paragraph 14 of the claim and demands strict proof thereof.

33. Defendant denies the allegations contained in paragraph 15 of the claim and demands strict proof thereof.

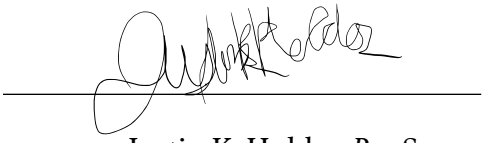
WHEREFORE, Defendant, Justin Holder, denies 3rd Party Plaintiff/Intervenor's claims and demands judgment and declaratory relief in his favor as to all allegations directed against him, for dismissal of 3rd Party Plaintiff/Intervenor's Complaint and Petition, and for such other and further relief as the nature of this cause may require.

Respectfully submitted,

Justin K. Holder, *Pro Se*
308 West Chapline Street
Sharpsburg, Maryland 21782
(240) 356-2008

DEMAND OF JURY TRIAL

COMES NOW Defendant, Justin Holder, in Proper Person, and files this Demand for a Jury Trial under the 7th Amendment of the United States Constitution and Article 23 of the State Constitution and in accordance with Rule 2-325(a) and MD Cts & Jud Pro Code § 3-404 (2019).



Justin K. Holder, *Pro Se*

Justin K. Holder

Pro se Litigator

308 W. Chapline St.
Sharpsburg, MD 21782
t: (240) 356-2008
holder2004@Gmail.com

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Exhibit B

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of June, 2022, a copy of the foregoing Answer to Washington County Board of County Commissioners Claim in Equity to Enjoin Defendant Justin Holder from Constitutional Rights of Redress and Demand of Jury Trial was served via the MDEC system to :

Edward Kuczyński, Esq.,
Kevin Karpinski, Esq.,
Talley Kovacs, Esq.,
Peter Rogers, Esq.,
R. David Pembroke, Esq.,
Brandy Peeples, Esq.,
Robert Kline, Esq.,
Justin Holder, *Pro Se*

Justin K. Holder, *Pro Se*

Justin K. Holder

Pro se Litigator

308 W. Chapline St.
Sharpsburg, MD 21782
t: (240) 356-2008
holder2004@Gmail.com

SAMPLE DENIAL LETTER

May 1, 2020

Connie Have, Esquire
1000 Lawyer Building
Baltimore, Maryland 21200

Dear Ms. Have:

I have received your letter dated April 5, 2020, in which you request certain records under the Public Information Act, Annotated Code of Maryland, General Provisions Article ("GP"), § 4-101 *et seq.*, on behalf of your client, Wanda Know. In particular, you seek to inspect and copy all records in my custody and control pertaining to the following:

> (A) the denial by the Commission of the license or permit to Wanda Know which occurred on August 17, 2015, and
>
> (B) any studies, statistics, reports, recommendations, or other records that treat in any fashion the Commission's actions, practices, or procedures concerning the granting or denial of licenses or permits during the last three fiscal years.

My staff has collected those records in our custody that are responsive to your request. You may inspect all of the records we have compiled with two exceptions.

First, 13 emails between an Assistant Attorney General and the Commission's Chairman and 2 confidential legal memoranda prepared by the Assistant Attorney General for the Chairman are subject to the attorney-client privilege and are therefore protected from disclosure by GP § 4-301 as privileged or confidential records. These same materials are also covered by the deliberative process privilege, and thus exempt from disclosure under GP § 4-301, and qualify as intra-agency memoranda exempt from disclosure under GP § 4-344. All of these records are internal materials prepared by counsel to inform the Commission of the different options available to it in considering

Exhibit C

Ms. Know's application. In accordance with GP § 4-343, I find that the disclosure of these materials would be contrary to the public interest because it would discourage the Commission's receipt of full and frank advice. Moreover, because the entirety of these materials are covered by the privileges and exemptions just described, it is not possible to redact only part of the information they contain.

Second, I am also denying access to a portion of an investigatory file of this agency concerning your client. This file was compiled as part of a law enforcement investigation of this agency and is therefore covered by GP § 4-351. While your client is a person in interest as to these records, complete disclosure of the file would be contrary to the public interest since inspection would disclose the identity of a confidential source and would also disclose investigative techniques and procedures of the Commission. Apart from that portion, which has been redacted where appropriate, the balance of the investigatory file on your client is available for your inspection.

The cost of searching for and preparing the records for disclosure comes to $380, which represents 16 hours of staff time at prorated hourly salaries of $25 and $40 per hour, with the first two hours provided free of charge. You may also obtain copies of the records. This agency charges a fee of $.25 per page for copies. If you wish to inspect the records that are available to your client under the Act, please call my administrative assistant, Madge Public, to arrange for a mutually convenient time.

Pursuant to GP § 4-362, your client is entitled to seek judicial review of this decision. Alternatively, your client may file a request for mediation with the Public Access Ombudsman and, if the Ombudsman is unable to resolve the matter, may subsequently seek a resolution from the Public Information Act Compliance Board for those matters within the Compliance Board's jurisdiction. *See* GP §§ 4-1A-01 *et seq.* and 4-1B-01 *et seq.* Also, if you have any questions about this letter, please feel free to contact me.

Sincerely,

Freeman Information
Executive Director

cc: Evan Hand
Assistant Attorney General

Exhibit C

ORIGINAL

IN THE CIRCUIT COURT FOR

WASHINGTON COUNTY, MARYLAND

Justin K. Holder, Plaintiff,	)
V.	) Case No. C-21-CV-23-000016
Washington County Board of County Commissioners of Washington, et al Defendants.	)

TELEPHONE CONFERENCE

November 14, 2022

PARTICIPANTS:

Justin Holder

Kevin Karpinski, Esq.

Exhibit D

TELEPHONE CONFERENCE

November 14, 2022

MR. HOLDER: Hey, good morning, Mr. Karpinski. You are on mute, I think.

MR. KARPINSKI: Good morning. How you doing, Justin?

MR. HOLDER: I am doing well. How was your weekend, sir?

MR. KARPINSKI: It was okay, no complaint. How about yourself?

MR. HOLDER: Pretty good. A little cooler than last, but I'll take it.

MR. KARPINSKI: Okay. I wanted to see -- I am a little confused about your request for this file because isn't this what we have already produced?

MR. HOLDER: I'm not familiar with what was in the zip file, so I can't -- you guys would know that. I wouldn't know that.

MR. KARPINSKI: Okay, okay. Well, I'll get you the zip file. I think it's everything that we have already produced, but we'll just produce it again.

And this last request, educate me on this; how are we going to make it so Mr. Downey is not spending a lot of time doing research?

Exhibit D

MR. HOLDER: Okay. Hold on now. So, you're just going to forward the e-mail from Josh O'Neal to me; is that basically what you were thinking when you said produce it, just whatever Josh sent to Andy, you were just going to forward that?

MR. KARPINSKI: Yes.

MR. HOLDER: Okay. Now, you're talking about a last request. Is that the request with the 1936 road atlas?

MR. KARPINSKI: Yes, 1936 road atlas abandonment closure termination.

MR. HOLDER: Okay. If you go down to the bottom -- I went down to the land records room in the County Courthouse. There is a book called, "The Paper Vision Computer," it's where they keep the county ordinances. I went through every single one of those county ordinances. I went through the County Commissioners' minutes. So I proffered all of what I would call the burdensome, very labor intensive areas to search. There may not be any other places to search, but if Mr. Downey knows of another place to search, I'm just asking, is there another place where they would have kept information on this road abandonment.

MR. KARPINSKI: Okay. Above and beyond what you have already done?

MR. HOLDER: Above and beyond what I have already done. I mean, he can just put a disclaimer in there, whether he searched them or not, he's going to take my word for it. And I'll take the responsibility if I missed one in those indexes. They are public information. I typically don't ask a Government entity to search something that I have equal opportunity to search. I'm not looking to just waste their time, but sometimes they have files, you know, I don't want to say proprietary, but aren't public accessed indexes of plats or something.

MR. KARPINSKI: Right.

MR. HOLDER: So, if they have something like that, if he would search it, and even if he just says, hey, I've got these indexes, they are public, but hey, Justin, have at it and go spend a couple hours looking at it, I will take the time and do it.

MR. KARPINSKI: Okay. So, let me speak to Mr. Downey to see whether there are any other places to search for information regard this road abandonment beyond what you have already listed.

MR. HOLDER: That would be perfect.

MR. KARPINSKI: I'm write you a letter letting you know if there are. If they are, we will, obviously, make them available.

Exhibit D

MR. HOLDER: I appreciate that.

MR. KARPINSKI: Okay. Well sounds good. Well, I am taking care of those and I will get back to you later on this week, and I just wanted to make sure I understood what those two requests were. So, I'll take care of that, and then I'll get you a response later this week, and we'll go from there.

MR. HOLDER: All right. I appreciate your time, sir.

MR. KARPINSKI: You have a great week. Enjoy your hike.

MR. HOLDER: I will, I will. Maybe next time you can come along.

MR. KARPINSKI: It's a pretty day for one. Take it easy, Justin.

(End of Telephone Conference.)

IN THE CIRCUIT COURT FOR

WASHINGTON COUNTY, MARYLAND:

I, Jackie Smith, Court Reporter in and for the aforesaid County and State, do hereby certify that the foregoing is a true and correct transcription of the aforesaid telephone conference.

Given under my hand this 26th of June, 2023.

Jackie Smith

Jackie Smith, Court Reporter

P.O. Box 143, Boonsboro, MD 21713

(301) 326-5199

JACKIE SMITH
NOTARY PUBLIC
MONTGOMERY COUNTY
MARYLAND

My Commission Expires: March 30, 2024

Gmail Justin Holder <jholder2004@gmail.com>

Public information request

Justin Holder <jholder2004@gmail.com> Fri, Jul 10, 2020 at 3:28 PM
To: "Bright, Andrew" <abright@washco-md.net>, kdowney@washco-md.net
[redacted]

Please provide the following documents related to sewer policy, washington county water quality policy, and the 1985 to 1991 sanitary sewer installation in distric 4-1.

1. The gilbert/commonwealth study, report and subsequent grant application and approval documents.

2. The construction plans that were initially submitted for the 4-1 sewer installation. Please also include all plan revisions and as built drawings.

3. The boonsboro-keedysville-sharpsburg 201 facilities plan.

4. The original article 1 of the 1988 sewer policy, before it was replaced in 1993.

5. The original 1988 sewer policy article 4, before it was replaced in 1995.

6. All notification letters, notices, newspaper ads,, letters to customers,, notices of service and all meeting minutes for public hearings, audio files from said meeting.

7. Please provide all correspondence and communication to residents in the 4-1 sewer district during installation of the sanitary sewer, including connection availability letters and connection notices.

8. Please provide all request for connection and letters sent in by customers during the 1985 to 1991 installation of sanitary sewer in the 4-1 district.

Please exclude sewer connection sheets provided in a previous pia to adam Greivell.

Thank you,
Justin holder

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Exhibit E

Kirk C. Downey
County Attorney

Kendall A. McPeak
Deputy County Attorney

B. Andrew Bright
Assistant County Attorney

Washington County MARYLAND

OFFICE OF THE COUNTY ATTORNEY

July 21, 2020

Re: Public Information Act Request
dated 7/10/2020

jholder2004@gmail.com
Justin Holder
25 Antietam Drive
Keedysville, MD 21756

Dear Mr. Holder:

Our office is in receipt of your email dated July 10, 2020 requesting records pursuant to the Maryland Public Information Act, MD. Code, Gen'l Prov. Art. §§4–101 et seq. ("PIA"). Your requests and correlating responses from our office are set forth below. To keep your numerous requests grouped in an organized fashion, our office has numbered each request received thus far. The inquiries submitted below are considered to be the seventeenth (17th) set of requests, not including in the count a few former requests that were refocused for narrowing of responsive content. For clarity, your requests are set forth as follows:

***Inquiry No. 1*:** "The gilbert/commonwealth study, report and subsequent grant application and approval documents."

***Inquiry No. 2*:** "The construction plans that were initially submitted for the 4-1 sewer installation. Please also include all plan revisions and as built drawings."

***Inquiry No. 3*:** "The boonsboro-keedysville-sharpsburg 201 facilities plan."

***Inquiry No. 4*:** "The original article 1 of the 1988 sewer policy before it was replaced in 1993."

***Inquiry No. 5*:** "The original 1988 sewer policy article 4, before it was replaced in 1995."

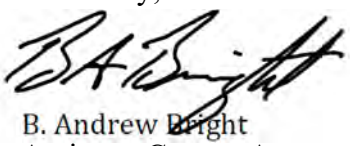
***Inquiry No. 6*:** "All notification letters, notices, newspaper ads,, letters to customers,, notices of service and all meeting minutes for public hearings, audio files from said meeting."

***Inquiry No. 7*:** "Please provide all correspondence and communication to residents in the 4-1 sewer district during installation of the sanitary sewer, including connection availability letters and connection notices."

***Inquiry No. 8*:** "Please provide all request for connection and letters sent in by customers during the 1985 to 1991 installation of sanitary sewer in the 4-1 district."

As to Inquiry No. 3, the County has been unable to locate the 201 facilities plan despite engaging in a search. As to Inquiries No. 4 and 5, the County has been unable to locate further documentation beyond that which was provided to you previously. As to Inquiries 1, 2, 6, 7 and 8, the Washington County Division of Environmental Management has estimated that there are as many as 10,000 pages of written records responsive to these requests (no recordings or audio files have been discovered). The cost of review and duplication of documents which are not exempt from production is estimated at $3,000.00. As indicated in responses to your previous requests, our office requires a deposit of one half the estimated amount in order to commence the search and retrieval of these records.

Sincerely,



B. Andrew Bright
Assistant County Attorney

Exhibit F

Gmail Justin Holder <jholder2004@gmail.com>

Public information requesr

Justin Holder <jholder2004@gmail.com> Sun, Aug 9, 2020 at 10:57 AM
To: "McCarty, Rachael" <rmccarty@washco-md.net>, "Bright, Andrew" <abright@washco-md.net>
[redacted]

I would like to modify my request. Since you will be looking in long term storage can you please include 3 more documents to retrieve while down there.
1. The Boonsboro Sharpsburg keedysville 201 facilities plan.
2. The gilbert commonwealth study used to create the 4-1 sewer district.
3. The original 1988 sewer plan article 1, before 1993 revision.

Thank you,
Justin Holder
[Quoted text hidden]

10 attachments

image001.png
15K

image002.png
3K

image003.png
3K

image004.png
3K

image005.png
4K

image004.png
3K

image003.png
3K

image002.png
3K

image005.png
4K

image001.png
15K

E. 267

Exhibit G

Kirk C. Downey
County Attorney

Kendall A. McPeak
Deputy County Attorney

B. Andrew Bright
Assistant County Attorney

Washington County
MARYLAND

OFFICE OF THE COUNTY ATTORNEY

September 2, 2020

Re: Public Information Act Request
dated 8/24/2020

skgreen727@gmail.com
Sara Green

Dear Ms. Green:

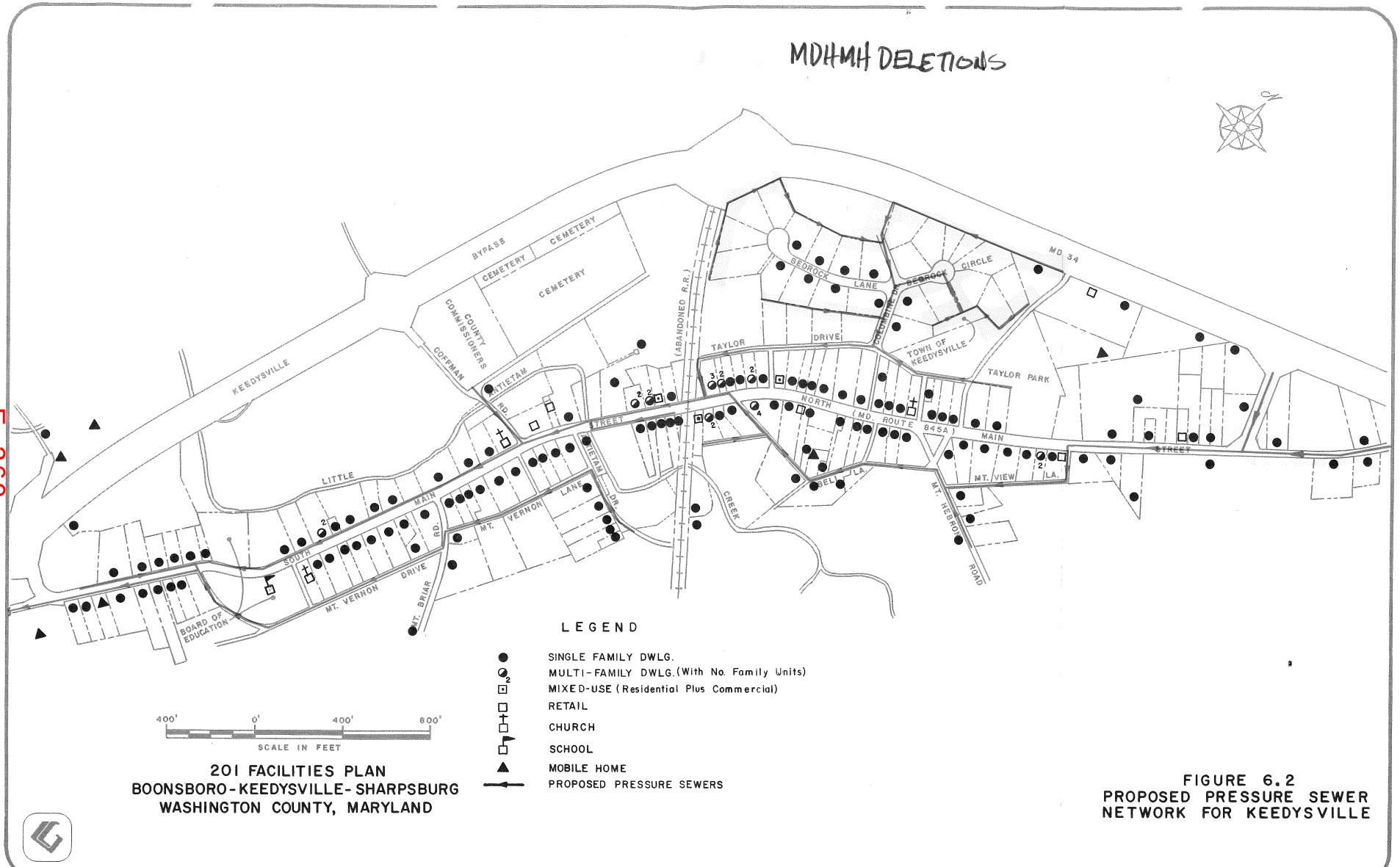
Our office is in receipt of your email dated August 24, 2020 requesting records pursuant to the Maryland Public Information Act, MD. Code, Gen'l Prov. Art. §§4–101 et seq. ("PIA"). Your request and correlating response from our office are set forth below.

"Please provide the following document. This document may be in long term storage on a floppy drive with water quality or planning and zoning files. The document is "the boonsboro-keedysville-sharpsburg 201 facilities plan". The document was created in the mid 80s and was generated from a gilbert commonwealth study to create the 4-1 sanitary district in 1988. Please provide time and cost in 10 days"

In response to your request, the County has been unable to locate the 201 facilities plan despite engaging in an extensive search.

Sincerely,

B. Andrew Bright
Assistant County Attorney



201 FACILITIES PLAN
BOONSBORO-KEEDYSVILLE-SHARPSBURG
WASHINGTON COUNTY, MARYLAND

FIGURE 6.2
PROPOSED PRESSURE SEWER
NETWORK FOR KEEDYSVILLE

E. 269

Exhibit I

WASHINGTON COUNTY SANITARY DISTRICT

33 West Washington Street, Hagerstown, Maryland 21740 ■ (301) 791-3083

October 13, 1981

The Honorable Ralph E. Taylor, Jr.
Mayor- Town of Keedysville
Town Hall
Keedysville, Maryland 21756

Re: Boonsboro-Keedysville-Sharpsburg
'201' Facilities Plan
EPA No. C-240655-01

Dear Mayor Taylor:

Please find enclosed one (1) copy of Addendum No. 1 to the Boonsboro-Keedysville-Sharpsburg '201' Facilities Plan. for your review. Please make this copy available to all members of the Town Council and to all members of the public advisory group, for their review.

If you have questions, please advise.

Very truly yours,

WASHINGTON COUNTY SANITARY DISTRICT

Robert M. Johnson
Project Manager

RMJ:tmm

Enclosure as Noted.

cc: James L. Eckel
Harold B. Nunamaker

Exhibit J

Gilbert/Commonwealth engineers and consultants

GILBERT ASSOCIATES, INC., P. O. Box 1498, Reading, PA 19603/Tel. 215-775-2600/Cable Gilasoc/Telex 836-431

October 9, 1981

Washington County Sanitary District
33 West Washington Street
Hagerstown, MD 21740

Attn: Mr. Robert Johnson
Project Manager

Re: Boonsboro-Keedysville-Sharpsburg
201 Facilities Plan
EPA No. C-240655-01
W.O. #06-7289-000

Gentlemen:

We are pleased to submit herewith the following items with respect to the above-referenced project:

- Ten (10) additional copies of the draft of the Boonsboro-Keedysville-Sharpsburg 201 Facilities Plan, dated September 1980.
- Fifteen (15) revised covers for the draft BKS Facilities Plan.
- Twenty-five (25) copies of Addendum No. 1 to the Boonsboro-Keedysville-Sharpsburg 201 Facilities Plan, dated August 1981.

This submission should serve as the basis for this project's movement into Step 2 Design.

We look forward to working with the Washington County Sanitary District in order to bring about the implementation of the BKS Facilities Plan recommendations.

Very truly yours,

Anthony Savino, Jr.

AS/mdb
Enclosures
cc: E.J. Vanderbilt
D.L. McGill
S.P. Shah
D.R. Kratzer

RECEIVED
OCT 9 1981
WASHINGTON CO.
SANITARY DIST.

525 Lancaster Avenue, Reading, PA/Morgantown Road, Green Hills, Reading, PA 215 775-2600
209 East Washington Avenue, Jackson, MI 517 788-3000/80 Pine Street, New York, NY 212 482-8480

Exhibit K

WASHINGTON COUNTY SANITARY DISTRICT

33 West Washington Street, Hagerstown, Maryland 21740 ■ (301) 791-3083

October 15, 1981

Chris Kennedy, D.D.S.
4901 Battery Lane
Bethesda, Maryland 20014

Re: Boonsboro-Keedysville-Sharpsburg
'201'Facilities Plan
EPA No. C-240655-01

Dear Dr. Kennedy:

In your letter dated 6/25/79 you made reference to having a contract on a property, for which you had hopes of rehabilitating, in the Town of Keedysville.

I thought I would let you know that the Boonsboro-Keedysville-Sharpsburg '201' Facilities Plan has been completed and has been submitted to the Maryland Department of Health & Mental Hygiene-Office of Environmental Programs for their review. We do not know at this time if this project will move forward or will be held in abeyance. Implementation requirements as they relate to the three (3) towns and the Washington County Sanitary District will also have to be reviewed and finalized if the project moves forward.

If you have any questions, please advise.

Very truly yours,

WASHINGTON COUNTY SANITARY DISTRICT

Robert M. Johnson
Project Manager

RMJ:tmm
cc: Harold B. Nunamaker

Exhibit L

THIS BOX WILL BE SUBJECT TO TERMINATION!
*ANYONE TAMPERING WITH THIS BOX WILL BE SUBJECT TO TERMINATION!

Exhibit M

KARPINSKI, CORNBROOKS & KARP, P.A.

ATTORNEYS AT LAW
120 East Baltimore Street, Suite 1850
Baltimore, Maryland 21202-1617

Telephone 410-727-5000
Facsimile 410-727-0861
Email bkcklaw@aol.com
Website www.kcklegal.com

KEVIN KARPINSKI *
E. I. CORNBROOKS, IV

DANIEL M. SCAPARDINE
JASON C. PARKINS
OLIVIA CARRARA*
CHRISTINA DONALD

* Admitted in MD and DC

DANIEL KARP
MICHAEL B. RYND
OF COUNSEL

RICHARD T. COLARESI
RETIRED

May 23, 2023

via email Jholder2004@gmail.com only
Justin Holder
308 West Chapline Street
Sharpsburg, Maryland 21782

RE: 342-102
PIA Request regarding "Washington County Sewer Agreements – Maugensville SUBDISTRICT"

Dear Justin:

This serves as a response to correspondence sent to Washington County (the "County") on April 26, 2023 submitted pursuant to the Maryland Public Information Act ("PIA"), Maryland Code, General Provisions Article ("GP") § 4-101, *et seq.*

In that request you sought the following:

> I would like to inspect, photograph or copy the 'agreements' to operate, construct and maintain a sewer/water system made between the Washington County Government and/or Washington County Sanitary District and municipalities/political bodies representing:
>
> Subdistrict 15 Maugensville/orchard Hills;
>
> signed and sealed on or before December 31st 1993.

As you are well aware, you previously requested all such sewer agreements and the County requested a deposit associated with the search and retrieval of all fifteen of those agreements, which are housed in numerous boxes of

Exhibit N

documents, organized by project/location. You declined to pay the deposit the County requested and subsequently sought the sewer agreement corresponding to the Cloverton subdistrict by way of yet another PIA request. Out of an abundance of good faith and under the impression that you were narrowing the scope of your prior request, the County conducted a search and provided you with a copy of the Cloverton agreement.

In the instant request, you seek another one of the sewer agreements. It has become apparent to the County that you are attempting to individually request those agreements to circumvent the fee estimate and the request for a deposit that the County previously provided to you. While the PIA does not specifically address the aggregation of separate PIA requests, this issue has been addressed by the Public Information Act Compliance Board:

> As the PIA Manual explains, on 'rare occasion[s],' a requestor might 'attempt to artificially break a large request into a series of smaller requests in order to obtain two free hours searching for each request, thereby circumventing the assessment of a higher fee.

PIACB Op. 21-12 (May 27, 2021) (citing Office of the Attorney General, Maryland Public Information Act Manual (16th ed. 2021) at 7-2); *see also* PIACB Op. 22-05 (Dec. 10, 2021).

That being said, it has become clear that you are attempting to individually request each of the fifteen agreements you previously requested from the County in attempt to circumvent the assessment and payment of the fee associated with the search of those records previously identified by the County. As a sidenote, in another letter that will be sent to you today, the County revised the fee estimate previously provided, given that the County provided the Cloverton agreement to you. Accordingly, because you are seeking to individually request each of those fifteen agreements and artificially break-down your prior request into smaller requests to obtain the benefit of two free hours of search time for each, the County is aggregating this request with your initial request for those records.

In accordance with my response to your PIA request for "Washington County Sewer Agreements – OTHER SUBDISTRICTS," the County requests that you pay a $7,082.20 deposit to proceed with your prior request for all of the sewer agreements you previously requested, excluding the Cloverton agreement which was previously provided to you. At this point, the estimated deposit is not concrete and the cost of fulfilling your request may be less than or exceed that amount. If the cost is less than the estimated deposit, any unused funds will be

returned to you. If the cost exceeds your deposit, the County may require you to submit additional funds to proceed with your request and to provide you with the responsive records. Please let me know if you intend to submit a deposit and to proceed with your request.

You may refer any concerns about this correspondence to the Public Access Ombudsman pursuant to GP § 4-1B-01 *et seq.* Additionally, do not hesitate to contact my office in the event you wish to narrow the scope of your request.

Sincerely,

KARPINSKI, CORNBROOKS & KARP, P.A.

By: Kevin Karpinski

KK:jp

cc: Kirk C. Downey, Esquire (kdowney@washco-md.net)
Kendall A. Desaulniers, Esquire (kdesaulniers@washco-md.net)
Kimberly Jacobson (kjacobson@washco-md.net)

WES MOORE
Governor

ARUNA MILLER
Lt. Governor

LISA A. KERSHNER
Public Access Ombudsman

STATE OF MARYLAND
OFFICE OF THE
PUBLIC ACCESS OMBUDSMAN

MEDIATION DISPUTE RESOLUTION FINAL DETERMINATION

REQUESTER: JUSTIN HOLDER
CUSTODIAN: WASHINGTON COUNTY GOVERNMENT
FILE NUMBER: 650-01-23

JUNE 22, 2023

Relevant Summary

On March 24, 2023, the requester, Mr. Justin Holder, submitted a Maryland Public Information Act ("PIA") request to Washington County ("County") "…to inspect, photograph or copy the "agreements" to operate, construct and maintain a sewer/water system made between the Washington County Government and/or Washington County Sanitary District and municipalities/political bodies…". The PIA request identified specific parameters to define the records being sought. The County responded on April 6, 2023, estimating fees for this PIA request to total $7,602.95 and requesting payment in-full before search retrieval and review would begin. The County also estimated that approximately 45 days would be required to complete the search for the responsive records. Between April 6, 2023, and June 2, 2023, Mr. Holder and the County exchanged correspondence regarding the scope of the PIA request, the total estimated fees, and the granting of a fee waiver request based on public interest.

Request for Mediation with the Office of the Public Access Ombudsman

Mr. Holder contacted the Public Access Ombudsman on June 2, 2023, to request mediation. A file was opened with the Office on June 9, 2023. The disputes presented for mediation were the denial of Mr. Holder's fee waiver request and the estimated fees totaling $7,602.95 which Mr. Holder believes are excessive.

Outcome of Mediation

The disputes presented for mediation are **unresolved**. On June 21, 2023, the County respectfully declined to enter mediation in an attempt to resolve the dispute.

Notice of PIA Compliance Board Complaint Procedures

For certain disputes that are **unresolved** or only **partially resolved** following mediation with the Ombudsman, a requester or custodian has the right to file a complaint with the PIA Compliance Board ("PIACB"). Such disputes include disputes about:

- Denial of inspection of a public record;
- Charging unreasonable fees higher than $350;
- A failure to respond to a request for a public record within certain statutory time limits; and
- Frivolous, vexatious, or bad faith requests.

A complaint must be filed within 30 days of receipt of the final determination issued by the Office of the Public Access Ombudsman following attempted mediation of the dispute. Please note: the Ombudsman does not file complaints with the PIACB. For more information about the Board's procedures, please see the Board's regulations, COMAR Title 14, Subtitle 02. A complaint can be filed by email to the Board's dedicated inbox at piaopengov@oag.state.md.us or by mail at:

Public Information Act Compliance Board
c/o Office of the Attorney General
200 St. Paul Place
Baltimore, Maryland 21202

For more information about the Board, including a link to a form complaint, please visit https://www.marylandattorneygeneral.gov/Pages/OpenGov/piacb.aspx.

Submitted by: Lisa A. Kershner, Public Access Ombudsman

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

JUSTIN HOLDER *

PLAINTIFF *

VS. * CASE NO.: C-21-CV-23-16

BOARD OF COUNTY COMMR'S OF *

WASHINGTON COUNTY, et al. *

DEFENDANT *

****

OFFICIAL TRANSCRIPT OF PROCEEDINGS

Hagerstown, Maryland

September 6, 2023

9:31 A.M.

BEFORE:

The Honorable Brett R. Wilson, Administrative Judge

Appearances:

For the Plaintiff: Justin Holder, Pro se

For the Defendant: Kevin Karpinski for Defendants

Transcribed from electronic recording by:

Tracy L. Zamora, Court Reporter

Circuit Court for Washington County, MD

24 Summit Avenue, Suite 302

Hagerstown, Maryland 21740

240-313-2548

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P R O C E E D I N G S

THE COURT: All right, good morning everyone. This is case, uh, let's see, C-21-CV-23-16, Holder versus Board of County Commissioners. Uh, please introduce yourself, sir.

MR. KARPINSKI: Good morning, your Honor. Kevin Karpinski on behalf of the defendants.

THE COURT: Okay. And sir?

MR. DOWNEY: Kirk Downy, county attorney.

THE COURT: Okay. And could you introduce yourself, sir?

MR. HOLDER: Uh, Justin Holder, appearing in proper person, sir.

THE COURT: Very good. Well, I think we're here on, uh, your motion to dismiss. Is that correct, Mr. Karpinski?

MR. KARPINSKI: Yes, your Honor.

THE COURT: All right. Well, uh, you may have a seat, Mr. Holder. If there are any preliminary matters, I'll hear them, otherwise we'll just get right to the heart of the matter.

MR. KARPINSKI: I don't believe there are, your Honor.

THE COURT: All right.

MR. KARPINSKI: Essentially a motion to dismiss, or

in the alternative, a summary judgment. We've actually attached literally 30 exhibits, uh, and we've had to do so, your Honor, unfortunately because the amended complaint in this case, uh, just materially misrepresents what the county has done in response to MPIA request and Mr. Holder has filed. I've lost count, but I think we are at 130 plus MPIA requests that we've had over the last two years to respond to. And I believe we have five at issue that are involved in the amended complaint. I'd like to just go through them. Um, they're laid out in detail in regard to the exhibits.

THE COURT: Right.

MR. KARPINSKI: But the first is a - - is a zip-file request that Mr. Holder requested on November 3, 2022. And this was a zip-file, uh, with basically documents that were retrieved, and actually provided to Mr. Holder in one of Mr. Holder's other cases, uh, involving documents that were held at the suggestion of then Assistant State's Attorney, Joe Michael, now Judge Michael. Uh, so, uh, I asked for a meeting on November 10 because I was really unclear why this request came in given the fact that the documents had already been provided to Mr. Holder. We had that meeting on the 14th and the county again provided, I think for the second or third time, the zip-file and the documents. And Mr.

Holder, maybe there was miscommunication, Mr. Holder seemed to think that I was going to have Mr. O'Neil, my -- my client, the IT person, correspond directly with him. That was never my intention. But I have literally provided these documents at least three times now. And so I - - I cannot possibly see how that can be the basis for the allegation in the amended complaint that he's received no response to that MPIA request. He has received it multiple times.

With regard to the civil war trail request, uh, in January 2023, the county advised that the person that was most knowledgeable of that particular request was out due to a family emergency, uh, and that once upon returning, the county would go ahead and review it and ascertain whether there would be a fee estimate on that particular matter.

On January 27, the county requested that he narrow the scope of the request, Mr. Holder, or submit a five-hundred-dollar deposit as permitted by the MPIA statute. There was literally back and forth as reflected by the exhibits, uh, that are in that motion to dismiss or in the alternative for summary judgment. That exhibit nine, we did provide documents that were readily available, uh, and did - - did so at no charge for Mr. Holder. Um, but in order to proceed with the trail request, uh, the

county requested a deposit and never received it. Now what Mr. Holder wanted to do was come into the county offices and literally take a picture of the computer directory of - - of an individual, uh, which would in essence be creating a new document, which the MPIA doesn't require us to do, nor would be - - respectfully, your Honor, no disrespect to Mr. Holder, just have individuals come in and start taking screenshots of directories that are not at all relevant to anything, uh, that is germane to an MPIA request.

So we have not gotten a deposit with regard to the trail request, um, and that's still pending. Certainly if one is provided, uh, we will do the necessary research that is required. If it's less than five hundred dollars, we certainly will return whatever Mr. Holder is entitled to.

THE COURT: What's - - What's the per page amount that you're allowed to charge? Or is it, uh - - Is that what the five hundred for is copy costs or is it?

MR. KARPINSKI: It's - - It's literally - - So you get two hours of free research time.

THE COURT: Right, oh okay, so it's amount of personal time.

MR. KARPINSKI: It's personnel time and copying expenses. That would be associated with that.

THE COURT: Okay.

MR. KARPINSKI: And again, it's an estimate. It may very well be that it's more, it could be less. But that's what was determined to be a reasonable estimate to go ahead and comply with that request.

THE COURT: Okay.

MR. KARPINSKI: The third request was information regarding a cyber security incident where the county's IT system, uh, was under cyber attack.

THE COURT: Um-hmm.

MR. KARPINSKI: That request was denied pursuant to General Provisions Article 4-351, uh, which is an ongoing investigation. And then under 3 - - 3 - - I mean 4-434, which is - - relates to a cyber security exemption. Um, this investigation is still ongoing, your Honor. And I'm not at liberty to discuss the particulars of it. Obviously a very serious matter that a lot of organizations are confronting now with regard to, uh, the hacking of their IT systems. But those records were - - are not properly disclosable at this time. Uh, I'm not sure when and if they ever will be properly disclosable.

THE COURT: Um-hmm.

MR. KARPINSKI: The fourth request, um, relates to, um, agreements regarding insulation of water in Keedysville. And as reflected by the exhibits, um,

starting as early as May 28 of 2020, which is exhibit 15, and then followed up on September 3, 2021, that's in exhibit 17. These are letters from both Mr. Andy - - Andrew Bright, Assistant County Attorney at the time, and, uh, from Kirk Downey, county attorney, uh, indicating that the agreements do not exist. Uh, so again, when the request was made in April of 2023 for these agreements on April 23, 2023, Mr. Holder was advised that there were no responsive documents to the request. Mr. Holder has found a document retention schedule, uh, that apparently is within the state archives with regard to agreements, um, and has requested information regarding any amendments to the, uh, document retention policy. But again, the county does not have any responsive documents to that request. We cannot produce what we do not have. And Mr. Holder was told that.

The fifth request is a March - - relates to, uh, agreements and contracts regarding water and sewer within 15 subdivisions. And this was a request that was received on April 6 of 2023. The county advised, um, on April 6, 2023, the county advised that the responsive documents were within 15 boxes, and it would literally require someone to go through those boxes - -

THE COURT: Uh-hmm.

MR. KARPINSKI: - - to determine whether there is any personal confidential information, any attorney/client information, uh, that should be withheld to go ahead and comply with that request. Mr. Holder was given, uh, an estimate regarding fees. Mr. Holder requested that there be a fee waiver. As reflected by the response, that fee waiver was rejected and that's in exhibit 20. Based upon the analysis required by the MPIA with regard to, um, whether it's really in the public interest for there to be a fee waiver and I respectfully submit, given the voluminous number of MPIA requests that Mr. Holder seems to file, uh, and the fact that this information is only of academic interest to Mr. Holder and no one else, there would be no basis whatsoever for there to be a fee waiver.

THE COURT: Do you have the estimate there? The amount that you gave or the county gave? Sorry.

MR. KARPINSKI: The county, uh, indicated - - "The county estimates it would cost approximately $520 to search each project because there are 15 projects in total, the county estimates it will cost $7811.25 to search for, identify and retrieve the records requested." The first two hours of that search of course would be free and thus reduces it down to $7602.95. It gives a breakdown of - - In essence the combined hourly rate for

these two employees to do that would be $104.15 an hour. That's laid out in exhibit 20.

So in response to that, um, Mr. Holder filed yet another MPIA request asking for the Cloverton Subdivision. And for whatever reason, that document, that agreement was readily available, and the county gave that to Mr. Holder at no charge. Just that agreement and no other documents related to the project. That particular agreement was provided.

The very same day that that was given, um, Mr. Holder made another request for another subdivision within the 15 that had been previously requested. And it became clear, your Honor, to us that contrary to what the Attorney General's Office has indicated, uh, and the MPIA manual suggests, Mr. Holder was then taking each one of the 15 and basically then just taking and making individual requests, which the Attorney General's Office has stated, and we cited to the cases, uh, for the proposition that you're not permitted to do that. Uh, if you submitted a request in the aggregate for 15, uh, subdivisions, you cannot then go ahead and just say, "I want this one," "I want this one," "I want this one," to avoid having to pay any of the costs or expenses under the Maryland Public Information Act.

Um, so those are the requests that are at issue, your

Honor. I respectfully - - We've answered every one of them. Um, and there are 30 exhibits that reflect that we've answered every one of them. Um, so I would submit, one, that most - - that the Amended Complaint is moot, and in the alternative, there is no evidence of willful or wanton conduct that would justify a violation of the MPIA.

Um, we have also moved, your Honor, for sanctions in this case. And I don't do so lightly. Uh, I've been practicing law for 30 years and I rarely file motions for sanctions. I can probably count on one hand the number of times I've moved for sanctions against someone. But with all due respect to Mr. Holder, this is becoming absurd. We have 130 MPIA requests. The county is spending literally thousands and thousands of dollars responding to just Mr. Holder. Uh, there's a flowchart, literally a flowchart, that covers Mr. Holder's MPIA requests over time. This amended complaint is riddled with false, inaccurate statements. Mr. Holder is a pro se litigant, but he is certainly not a neophyte to this process, uh, and he has litigated a number of cases. I can count - - I can think of five or six that are pending in this courthouse alone. And so, uh, this complaint, uh, is - - is - - makes misrepresentations that the county did not respond. It is sanctionable under 1-341

of the rules. And I would respectfully submit that the Court should impose sanctions under the circumstances that are presented in this particular case. And I don't do so lightly, your Honor. Uh, but at some point, um, I respectfully submit the judiciary needs to step in here and - - and put an end to what is vexatious, frivolous litigation that is extremely time consuming and is a waste of taxpayer dollars. Unless the Court has any questions, I will submit.

THE COURT: Well just along the lines of sanctions, since you're talking about that, what specific sanctions are you asking for or suggesting to the Court if they were to be granted?

MR. KARPINSKI: The - - I would - - I preparation of the motion for summary judgment and I would submit that for the Court's consideration with affidavit and redacted billing - -

THE COURT: Okay.

MR. KARPINSKI: - - to reflect what was, uh, was actually expended to go ahead and respond to the amended complaint.

THE COURT: Okay so actual expenditures, gotcha.

MR. KARPINSKI: Correct.

THE COURT: Okay.

MR. KARPINKSI: Thank you, your Honor.

THE COURT: All right, thank you, sir. Mr. Holder, I'll be glad to hear from you.

MR. HOLDER: Thank you, your Honor. Justin Holder. Um, I guess the first thing I would address is Mr. Karpinski, I think, makes a valid point that these Public Information Act requests are getting to a point where the Court needs to step in, and they need to - - to firmly establish what the law is in the MPIA, so the county understands it because the county doesn't seem to understand the clear letter of the law and the MPIA. Okay? And the - - And the law that I'm referring to is Annotated Code General Provisions, uh, Section 203 (a)(1). The County has 30 days to grant or deny an application. And in none of these, none of these did that happen. There's no dispute of that - - With the 30 exhibits they provide with my affidavit or Mr. Downey's affidavit, there is absolutely no dispute whatsoever that the applications were not granted, and they were not denied within 30 days. That's what the evidence is before this Court.

In Section GP 203 (b)(3), "The failure to produce the records cannot, uh, be considered a bona fide dispute if they didn't follow the procedure and General Provisions 203 (b)(2)," which means they have to send me a letter within 10 days telling me what the fees are, if there is

going to be any delay, um, when they expect to have the records if they can't have them in 30 days. There's - - There's no evidence before this Court that they sent me a letter in 10 days. Thus there can be no dispute - - There is no bona fide dispute and these - - This is what my motion for summary judgment. I know it's not before this Court particularly, but it is ripe, and that's how this would narrow this issue that it would shift the burden to the county to sustain their denials of these public information requests. I think it's inappropriate for the county to come in 47 days, 60 days after the fact, and try to create a factual dispute, try to settle these. I'm trying to work in good faith with the county to reduce and narrow the scope. I get accused of making multiple requests. For all the - - And I'm sorry to jump around here, your Honor.

THE COURT: That's okay. I'm listening.

MR. HOLDER: So, for example, he says I made 15 requests for the sewer agreements. They didn't want to give those up. For whatever reason they wanted to charge seven thousand dollars to look through these boxes. I said, "Fine, just go into this one box and give me the Cloverton agreement." They get me the Cloverton agreement. That's - - That's a little different than what I was looking for because Cloverton was a project

where Williamsport extended their sewer line. So I was actually looking for a project where a municipality allowed the sanitary division to come in under their town charter and take over operations of a sewer system. I could have got the agreement from Maugansville could have been exactly what I looked for. That would have narrowed my scope. I don't think there's any evidence in the 30 exhibits that they gave you that says hey I'm going to start asking for these one-by-one. I'm attempting to work with the county in good faith, to limit these requests down, to try to narrow it, to try and save taxpayer money. You know for - - for reasons in the public interest. I - - I want to settle some environmental matters in the Town of Keedysville she's brought up. They've been fairly notoriously disputed in this courthouse over the last three years as Mr. Karpinski's acknowledged and I'm trying to find some resolution to who was responsible for installing a sewer line where we have a sewer line that is polluting the Little Antietam Creek in Keedysville. That's what I've been trying to find out for three years, haven't got that answer yet. 188 requests later on unfortunately. I can't get that answered for some reason.

Um, one thing that Mr. Karpinski, uh, said in his arguments that I don't think is before the Court and I

just wanted to raise it, give Mr. Karpinski an opportunity to address this. Maybe there is evidence. He said that they had provided a fee waiver at some point. Um, I believe the first correspondence in which I was charged a fee in the Rail Trail Agreement would have been - - would have been 47 days afterward from Mr. Karpinski sent me a letter. I don't believe anybody from the county, and I don't recollect that there - - It could be out there. I'm just - - Maybe Mr. Karpinski could show it to me because I didn't see it in the record. Um, so the reason I filed suit and the reason I placed on - - in my affidavit under personal knowledge that these requests haven't been answered within the 30-day period. I'm relying on the law the legislature created under General Provisions Section 203 (b)(2), (b)(3), and (a)(1). Those three provisions of the law tell me that these requests were denied because I didn't receive the documents. Therefore, the burden now would shift to the county to show that these denials were lawful. There's no evidence in the record that they had any lawful means to deny me the Rail Trail, uh, public information request. There's no lawful evidence in the record they could deny me the zip-drive request.

THE COURT: Well you've been provided that though, haven't you?

MR. HOLDER: I have not, your Honor. I have not - - I asked specifically - - Uh, I'm sorry, let me - - I was going to explain that to you next.

THE COURT: I'm sorry, go ahead. I don't want to take you out of turn. Go ahead and stay on your - - your course.

MR. HOLDER: No I was - - I was just getting ready to like me and you were thinking right where we're at here. We're in the same lane, okay?

So we're just moving on to a little different section of the General Provisions Code - - Maryland General Provisions Code 4-205.

THE COURT: Okay.

MR. HOLDER: Okay? And, uh, we're going to go to section (c) of 4-205.

THE COURT: All right, give me one second. Let me open it up. All right, 4-205. Okay, I've got it.

MR. HOLDER: So except for what's provided in paragraph two, "They shall provide an applicant a copy of the public record in a searchable and analyzable electronic format if the public record is in a searchable and analyzable electronic format and they applicant requests a copy of the record in a searchable and analyzable format." So they provided me paper copies, PDFs of what was in these files, but I asked for it in a

searchable and electronic format. That's specifically what our November 14th agreement, which I provided the transcript of that agreement. And if your Honor would like an original copy, I brought one for the Court as well.

THE COURT: That hasn't been submitted otherwise?

MR. HOLDER: It - - It has been submitted.

THE COURT: As long as it's in the case file, I'll have it.

MR. HOLDER: Well it's sort of dark. I can - - I mean this is a little bit more easier to read if you - - if you'd like it. If you're happy with it, it was one of my exhibits in my opposition to their second - -

THE COURT: Right, I thought that was in here. Let me, uh - - Well let me doublecheck. I thought everything was legible but let me look at it.

MR. HOLDER: It is. It's just a little bit dark and I try to make it as easy - - I know you guys have a lot of papers to review.

THE COURT: Oh it's legible yeah. I thought - - It's gray but it's not a problem.

MR. HOLDER: All right. Uh, then I'll keep the original here for myself.

THE COURT: So - - Sure, yep, please do.

MR. HOLDER: So generally I suppose because there was

an agreement made that the Court would look at the agreement for ambiguity. If there's no ambiguity, it should be a question of law. If there is ambiguity, we would probably need to have a trial to submit it on parole evidence. Um, - -

THE COURT: Okay.

MR. HOLDER: I mean that would be - - You know that - - that's what is before the Court as we have an agreement. I have a right to get them in electronical - - electronic searchable format by law. They haven't objected to that. Uh, they just said they provided it in paper form. I asked for the documents in electronic. I think I'm entitled to get the documents in electronic form.

Um, as far as I think I've covered the Maugansville Agreement, the Rail Trail Agreement, the zip-drive. Uh, the, um, FBI correspondence. I think we would look at the case in *Cranford v. Montgomery County*. Uh, and I like the way they analyze that. And *Glass versus Anne Arundel County*. They - - They had the county submit the - - the email records to the Court under seal so that they were part of the record so the Court could analyze and see if they actually would prejudice the investigation. That way they were part of the record if - - if somebody was aggrieved by the Court's decision,

they were easily submitted up to the, uh, the higher court to review that decision, de novo on that.

Um, ge - - generally think the county under - - at least under the investigatory exemption can't just make a generic denial. I submitted what a denial looked like - - letter looks like. It says, "Hey we have - - I got these from other agencies. "Hey we have 10 - - 10 emails, eight of them are the attorney general advising somebody to do something and we can't give those to you." Or "Two of them are part of an investigatory file and we can't give those to you because they would prejudice the investigation by x, y, and z." I don't think they can just say hey these are going to prejudice the investigation and that's - - that's also before the Court in the other matter Mr. Karpinski's talking about. This generic denial and - - and that's been - - I think the best legal argument I have on that is in my first, uh, supplemental opposition to their first motion for summary judgment and I'll tell you that's - - I don't know if you have that before you but it's going to be at page, page six and, um, you know *Faulk versus State's Attorney* back in '84 said hey you don't - - you don't have to give the records to somebody in the criminal proceeding if you have a criminal matter pending. I don't have any - - As far as I know I don't have any criminal matters pending

against - - against me.

THE COURT: Um-hmm.

MR. HOLDER: But I - - These records to me are important for two reasons. One, I want to know why the county would deny the FBI's help or the U.S. Attorney's help or the - - or the National Security Agency's assistance in recovering a cyber security - - Uh, that's what I asked for because I excluded anything where they accepted where they accepted the help of the FBI, the U.S. Department of Justice. And actually, I don't want those communications. I just want the few communications where they rejected the FBI's help in this matter and I'm trying to understand why we would do that. I don't think they would interfere, but if the county says they will interfere, I'd like the Court to review that. But also because we deleted data in this other matter, that there's been data that's been deleted, that that is of my personal interest. I am a person of interest in these records because maybe we didn't even have a data breach, maybe it's all a coverup of whatever they deleted. I know that seems farfetched, but it's still a possibility that - - or my data somehow got mixed in and it got deleted and now I don't have my records that I was looking for. So I think I'm a person of interest in that regard. So I think there's public interest and my

pecuniary interest in this request.

And, um, Judge Wilner talked about this in *Fioretti versus Board of Dental Examiners*. That's - - And I cited that case in my papers. It's 351 Md. 66., uh, 716 A.2d 258 on the Atlantic cite. And on the Atlantic cite, I'm on page 271. "And if an agency cannot satisfy its statutory burden of sustaining a decision to deny inspection of public record by simply asserting that all of the records solve the prejudice investigation. Or if it could do that, the Public Information Act would be meaningless." And he said I would hold that even if the document qualifies an investigatory file compiled for a state law enforcement or prosecution purpose within the meaning and - - and he goes to the state government article which now we recodified as "General Provisions," uh, then it was 10-16 (f)(1)(2), "The board failed as a matter of law to sustain its burden showing disclosure of the documents would prejudice investigation." And then because the criminal case against Mr. Holder was no longer pending, the defendants were not allowed to rely on a generic showing that it would interfere with the law enforcement proceeding. And that's *Blythe v. State*, uh, 161 Md. Special Appeals case, 492, 870 A.2d 1246, page 1285, 2005 case. And it says, "The defendants rather were required to make a particularized *ad hoc*

justification for exemption from disclosure under any of the seven provisions." And those now are recoded 5 Maryland 4-351(b) and there's seven enumerated exemptions and they have to tell you which one of those it is when they deny you these - - the inspection. And that's so I can make a determination on my own whether there's any good faith. Should - - Should I come or say hey is what the county - - or what they're saying sound reasonable? Am I going to be wasting taxpayers' dollars suing on this because they - - they made a legitimate and lawful denial of with MPIA? And if that's the case, I haven't sued them in - - in any of those cases. It's when they don't follow the letter of the law. That's when they get brought to court. I've tried to mediate with the county. I've shown in an exhibit they have no desire to mediate. The only choice I have when I don't get my information is to come to court. And I'm sure Mr. Karpinski has written plenty of complaints.

What's required in my complaint, your Honor, quite frankly, is the facts that show I'm entitled to relief. I have no reason to put in that complaint anything that they can use as a defense because we all know whatever you say in court can and will be used against you. So you keep it as tight as you can. You give the Court the facts that they need based on the law that you rely on to

bring a cause of action, and then you place it before the Court and you have the Court decide the law, decide whatever dispute of facts we have. And that's - - that's the angle of American process of, uh, you know justice. And we all pay our freight in this country. That's how it's always been. And if they choose to violate the law, then we're going to have to go to court and it's going to cost the taxpayers a lot of money.

Uh, the only other thing I have for your Honor - -

THE COURT: Um-hmm.

MR. HOLDER: And that's with the affidavits themselves. And you're going to have to help me with this and I mean by making a decision. I'm not saying I want you to give me advice, but we have an affidavit from Mr. Downey. And it says, "Hey, these emails are public records generally, right, so I've also submitted to the Court self-authenticating public records under 9-502. But then we need to look at the hearsay exceptions underneath of - - of I believe it's 9-800 to see if the statements made in those public records would meet the hearsay exceptions because Mr. Downey is not providing personal knowledge that there's been a search for the sewer agreement in his affidavit.

THE COURT: Um-hmm.

MR. HOLDER: Do you follow what I'm saying? He's

relying on potentially because Mr. Downey is the custodian, I think - - I think his affidavit could possibly be considered a authentication of business records, potentially. Or - - or somehow a certification. I don't know that they cer - - I don't know what he gives me self-authenticates or not. That would be an evidentiary decision. I'd have to - - You know you're the authority on that. But if - - if it's not, then their affidavit just simply isn't sufficient to - - to award them summary judgment because it leaves a dispute of fact because my affidavit is under personal knowledge, I haven't received these records. They're saying they don't exist. But I don't know that we have that before the Court properly for summary judgment. Does that make sense that I need you to decide that?

THE COURT: Okay.

MR. HOLDER: Okay. I think - - I think I covered it all. Do you have any questions, your Honor?

THE COURT: No. No. I - - I'm going to give Mr. Karpinski a chance to respond to some of the, uh, assertions that you made and then we'll - - If you have, uh, further things in response in rebuttal to Mr. Karpinski, I'll give you a change to do that too, okay?

MR. HOLDER: Okay I appreciate that.

THE COURT: All right, Mr. Karpinski.

MR. KARPINSKI: With regard to this zip-file your Honor, we provided the information in the format we have it in. Uh, I don't know - - We're not required to generate in some other format.

THE COURT: Right.

MR. KARPINSKI: This is the way it was - - it was provided from IT and while I understand Mr. Holder would like to get it in some other format, it doesn't exist. I provided it exactly - - forwarded literally the email from Mr. O'Neil regarding those zip-files.

THE COURT: Okay.

MR. KARPINSKI: The only late, uh, 10-day, 10 business day, uh, issue in terms of a fee estimate is regard to civil war trail where it was - - Mr. Holder was advised that the person that could - - would have knowledge - -

THE COURT: Um-hmm.

MR. KARPINSKI: - - of that wasn't in - - wasn't available because of a family emergency and we needed some additional time. It certainly was not intentional, willful, or a deliberate, uh, defiance of the requirements of the Maryland Public Information Act.

Uh, with regard to the, uh, cyber security, when he says he doesn't get a response, well that's cyber security requests he provided on November 24, and he got

an answer on November 28.

THE COURT: Uh-huh.

MR. KARPINSKI: And so - - And according to Mr. Holder, he's a person of interest because he's somehow a taxpayer in Washington County, which I appreciate. But that would make everyone a person of interest. And that, respectfully is not the law. Um, that investigation, I confirmed with Mr. Downey, is still ongoing. To the extent that its completed, then an evaluation will be done with regard to what, if anything, can be produced as a result of that.

THE COURT: Let me ask you this before you go on to your next point, on the cyber security request, uh, Mr. Holder has indicated that, uh, his reading of the law would - - would require some more specificity than the general exemption denial, uh, of an ongoing case. Something that's more reflective of what potential records may be or a number of potential records may be held and - - and such, and why they can't be disclosed. What's your reading of the law on that point?

MR. KARPINSKI: My reading of the law is that you have to be a person of interest to be able to fall into that category.

THE COURT: Okay.

MR. KARPINSKI: And that if you're just a member of

the public, you - - you would fall into that category. So - - And I think that is the distinction, and quite frankly, what we're arguing about in one of Mr. Holder's other cases.

THE COURT: Okay.

MR. KARPINSKI: Whether he was a person of interest for *Brady* material from the State's Attorney's Office.

THE COURT: Okay.

MR. KARPINSKI: But I don't believe that is the law. I think the law is, uh, simply that if you're not a person of interest, uh, the statutory scheme allows you to simply say that there's an ongoing investigation and disclosure of information would impede that investigation.

THE COURT: Okay.

MR. KARPINSKI: I - - I don't have anything else, your Honor, unless you - - the Court has any questions.

THE COURT: No.

MR. KARPINSKI: We submitted a bunch of materials. I guess I should address this affidavit. I'll just say, under rule 2-501, we're required to submit an affidavit.

THE COURT: Right.

MR. KARPINSKI: And Mr. Downey's affidavit is, uh, to demonstrate that the documents are genuine and authentic business records maintained by the county. Uh, that's

just required by the rule. This idea that - - I don't really understand what Mr. Holder is saying that somehow the person responding to an MPIA request is to do so under affidavit? Uh, I've never seen that before. Uh, it's obviously via letter and production of records if they are producible. Uh, so I'm not sure what evidentiary issue there would be. We obviously submitted an affidavit so that we would comply with the rule.

THE COURT: Um-hmm.

MR. KARPINSKI: Um, I think there again, your Honor, this goes back to the constant repetitive, uh, MPIA requests that are submitted by Mr. Holder. Regarding these agreements with Keedysville, I mean, he had an answer from Mr. Bright in 2020. He got another answer again, the same answer in 2021 from Mr. - - Mr. Downey. He submits another MPIA request and gets an answer that is the exact same. The county simply does not have the records. Uh, and so you know I would respectfully submit that, uh, the county has done everything it - - it requires to do under the MPIA. The exhibits reflect its compliance with the MPIA, and we will continue to comply with the requirements of the MPIA and that summary judgment is appropriate in this case.

THE COURT: Okay, thank you. Mr. Holder, final word?

MR. HOLDER: Uh, well yeah, I'm not going to raise

anything new. Um, just that, um, they said the format that they have it in but then he seemed to have conceded that now that IT may have it in an electronic searchable format. So it's - - It's a matter of the IT department provided it to the county attorney in - - in format A, but they still have it in format B, so therefore they would still have the record that I want in the format I've requested it from, uh, available. It's not that it's not available, they just don't want to give it to me that way. You know, that's how I see it.

Um, again, I would say nothing in the record reflects there were 10-day letters sent. I know he's saying there were 10-day letters here, but again, if you look at the affidavits, the exhibits that are before this Court, uh, there's nothing in the record that shows they've given me any notice within 10 days. Everything happened after 30 days. Um, in this matter, with the exception that we did have a zoom meeting. Um, I think that - - that request for the zip-file was made on November 3rd. We had a zoom meeting November 14th. We made an agreement. Records weren't produced. And then there was the - - you know email that kind of collided with, uh, me filing the complaint and then sending me an email after. I think three days prior to that, I had sent them a reminder. Um, so you know to that extent, I think the willing and

knowing aspect of this, I'm not here to argue that. I think that's the fact that we'd have to look at the record. I mean you have a - - I think you have a good factual - - a good record of evidence before you, but how those facts would be interpreted, I think you would need some testimony, some - - You know I'm going to tell you I take this inference. He's going to tell you he takes that inference. And I think that that - - At this - - At this stage would be inappropriate for summary judgment without taking some additional testimony, possibly doing some discovery, um, or things like that.

As far as the FBI communications, he's talking - - when - - when Mr. Karpinski says, "Hey on November 24th you asked. November 28th, we said no." That was for all communications. So I came back, and I narrowed it. I said, "Well okay, you might be right. You guys have a point. This could be - - This could - - This could interfere with your investigation. I don't want to do that. I just want the communications where you decline their help." And they come back and say, "If we have them." Well the sample denial letter I gave you in exhibit C, that the attorney general puts out, I mean that kind of tells you how you're supposed to give somebody a denial. And when you give people denials like this, I'm telling - - your Honor, I haven't filed

lawsuits against the agencies that have given me denials like this. I read them and I say well you know what they've got a point here. This is a - - I - - I don't want to have to go in front of a judge and try to explain why I sued these people when they gave me this, you know, denial that says hey I can't have it for these reasons. Sometimes I ask them, I say, hey, um - - For example, Department of General Services, I ask them for some 30-year-old agreements for this railroad and - - and some, uh, advice between multiple people. And they said, you know it's "Deliberative Process Privilege." I said, "Yeah but it's 30 years later." They said, "You know, we think if we give it to ya, it's going to chill the Deliberative Process Privilege for people in the future because they're going to say, uh, you know, how do we know 30 years from now we're not going to be embarrassed by what we said?" So I got that. And I - - I didn't file a suit there.

Uh, I made the same (unintelligible) request for the FBI communications. I made the same requests for *Brady* material I made in the other case, and you know, hey this is *Brady* material, this could help me with public interest, and I am a person of interest. I think I made it clear that I was a person of interest in that request. Um, the county is saying I'm not. Again I would think

that would be a dispute of fact that we couldn't just provide summary judgment. He does have a point, if you're not a person of interest, those exemptions don't necessarily apply the same way. So I think we'd have to resolve that fact before we could move forward with, uh, a decision in this matter.

And, uh, as far as the affidavits go, I'm not asking for them to provide an affidavit every time they give me a, you know, a public information request. But when you go to court and you file for summary judgment, there's certain requirements that - - that just dictate that you have to have an affidavit under personal knowledge because I haven't been allowed to question these witnesses. I haven't been allowed to evolve the - - Even if you file under information and belief, the question then is, well what information did you have, what belief did you have to lead you to this conclusion versus when you say, "personal knowledge, it's true," I can't contest that. The guy - - Other than call - - you know str - - go them a liar, which I don't want to do that. I - - I would like to have a proper affidavit and that's why I raised that issue with you. And if you notice in my - - my opposition to their second motion for, uh, to dismiss or in the alternative summary judgment, there was a 201 facilities agreement that I asked for several times. I

think it was a total of four times and finally I go in and it's sitting right there in the box, uh, with the sewer agreements. And then I just found out, and Mr. Karpinski, I don't know if you have this message, but he - - he had told me that the county attorney had to go through that box before I looked at it. So some of this stuff was removed. So it's possible that whatever county attorney agent moved it out of the box, when they went back to look again, that agreement is just not there because they - - they have moved the materials and they didn't put them back, um, from my January 6th inspection. I haven't been allowed to really, um, you know do any discovery to try and find out if - - you know, where we looked or possibly if they're - - Because this - - this agreement, I'll tell you why it's important to the public is that the dispute right now is over who is responsible to fix the sewer that's going into the Little Antietam Creek in Keedysville and polluting the wells. And the Town of Keedysville says no, no it's the county. And the County says, no, no it's the town. And until I get an agreement, uh, the town's Charter says they have to do it. We haven't been able to get this agreement. In order to resolve this public controversy, the agreement is important. And we're representing to the State of Maryland that we have it and I would (unintelligible)

that so.

THE COURT: When you say "we," who do you mean by "we?"

MR. HOLDER: The public.

THE COURT: Okay. You're not, uh, a part of Keedysville government or anything?

MR. HOLDER: I'm not a part of Keedysville government. I'm just a - - I've taken on what I thought was a public interest advocacy that I thought would get resolved.

THE COURT: Okay.

MR. HOLDER: And I ended up in a multitude of lawsuits over it.

THE COURT: Okay, very good. All right well obviously I'm not just going to rule from the bench on this. Uh, there is a lot of information submitted, a lot of history to this. And the other pending litigations, which aren't technically, uh, you know part of this but still in the compendium of suits, uh, they are part of this section of the circuit court docket, let's just say. So I will get a response out here very quickly. No guarantee but - - Do we have any other pending dates at this point in this or other matters that this would affect? I know there are other - -

MR. KARPINSKI: The only - - Well I should say that

the trial in the other Holder, Mr. Holder's - -

THE COURT: Is that 97, I think? Last digits?

MR. KARPINSKI: I think, October 17th in front of Judge Jordan. Tuesday, October 17th.

MR. HOLDER: We - - We moved it, remember? We moved it until one day of - -

MR. KARPINSKI: Yeah, I think that's why it's the 17th.

MR. HOLDER: Okay.

MR. KARPINSKI: I don't have a calendar in front of me.

THE COURT: Yeah, that sounds about right.

MR. KARPINSKI: October - - I had - - I have a commitment on the 16th. Monday.

THE COURT: That's right. Moved to the 17th. Because it, uh, I guess Judge Jordan denied the request for jury, so it became a bench trial and 17 and 18 are set aside for it as needed. Right.

MR. KARPINSKI: Yes sir.

THE COURT: Okay. Thank you for refreshing my recollection. All right I'll certainly get something out in this well before that date. All right. All right if nothing else, court is in recess until the next hearing. Thank you all very much.

PROCEEDINGS END AT 10:15 A.M.

DIGITALLY SIGNED CERTIFICATE

I HEREBY CERTIFY that I reported verbatim by electronic device the proceedings in the matter of Justin Holder v. Board of County Commissioners of Washington County, et al., Case No. C-21-CV-23-16, in the Circuit Court for Washington County, on September 6, 2023, before the Honorable Brett R. Wilson, Administrative Judge.

I further certify that the proceedings were transcribed by me to the best of my ability in a complete and accurate manner, and page numbers 1 through 36 constitute the official transcript of the proceedings.

I further certify that I am neither a relative to nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.

In witness whereof, I have affixed my signature this 15th day of September, 2023.

Tracy L. Zamora

Tracy L. Zamora, Court Reporter

E-FILED; Washington Circuit Court
Docket: 4/1/2024 10:34 PM; Submission: 4/1/2024 10:34 PM
Envelope: 15953616

IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

JUSTIN HOLDER	*	
	*	
Plaintiff	*	
v.	*	CASE NO.: C-21-CV-23-000016
	*	
BOARD OF COUNTY COMMR'S OF WASHINGTON COUNTY, *et al.*	*	
	*	
	*	
	*	
Defendant(s)	*	

* *

LINE - PLEASE RULE ON MOTION

COMES NOW Plaintiff, Justin Kyle Holder, in proper person, and files this Line:

WITH ALL DUE RESPECT DEFENDANT'S MOTION TO DISMISS WAS FULLY BRIEFED AND ARGUED OVER 6 MONTHS PRIOR, ON SEPT. 6, 2023.

MD. General Provisions Code Ann. § 4-362 (C)(1) "....a proceeding under this section, including an appeal, shall:

(i) take precedence on the docket;

(ii) be heard at the earliest practicable date; and

(iii) be expedited in every way."

Respectfully submitted,

Justin K. Holder, *Pro Se*
308 West Chapline Street
Sharpsburg, Maryland 21782
(240) 356-2001

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of April, 2023, the foregoing Lin was served via MDEC and thus served electronically upon all counsel/parties of record, severed via US Mail to all other counsel/parties requiring service not served by MDEC;

MDEC:

KEVIN KARPINSKI, #11849, CPF #9312150114
120 East Baltimore Street, Suite 1850
Baltimore, Maryland 21202–1617 - (410) 727-5000

Attorney for Defendant(s) Board of County Commissioners of Washington County; and Kirk C. Downey, Esq.

Justin K. Holder, *Pro Se*

E-FILED; Washington Circuit Court
Docket: 4/24/2024 6:23 PM; Submission: 4/24/2024 6:23 PM
Envelope: 16215245

IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

JUSTIN HOLDER	*	
	*	
Plaintiff	*	
v.	*	CASE NO.: C-21-CV-23-000016
	*	
BOARD OF COUNTY COMMR'S OF WASHINGTON COUNTY, *et al.*	*	
	*	
	*	
	*	
Defendant(s)	*	

* *

LINE - SUPPLEMENTAL EVIDENCE

COMES NOW Plaintiff, Justin Kyle Holder, in proper person, and files this Line, with all due respect to the court, Plaintiff is supplementing the record in this case with evidence that has been discovered after the Sept. 6, 2023 hearing in this matter:

A. "The County has denied Mr. Holder the right to inspect or photocopy public records described in the Maugansville sewer agreement request, baldly alleging: Mr. Holder is "attempting to individually request each of the fifteen agreements you [Mr. Holder] previously requested from the County in attempt to circumvent the assessment and payment of the [$7082.20] fee associated with the search of those records previously identified by the County." Amended Complaint ¶19.

B. "In March 2023, the complainant sent a PIA request to the County seeking "the 'agreements' to operate, construct and maintain a sewer/water system" that were made between the County and fifteen sanitary subdistricts and 'signed and sealed on or before December 31, 1993.'" PIACB 23-33, October 5, 2023, (*Washington County, Custodian Justin Holder, Complainant*), attached hereto as Ex. A, at p. 1. "The County, through counsel, acknowledged the request and provided an estimated fee of $7,602.95 for production of the records." *Id.* "Based on the submissions, including the additional information about the basis for the fee provided by the County, we conclude that the 'deposit'—i.e., the estimated fee—that the County has asked the

complainant to prepay—i.e., 'charged'—is unreasonable and direct the County to reduce that 'deposit' to $758.16." *Id.* p. 7.

C. "The County lacks proper foundation to baldly allege Mr. Holder is 'individually request[ing] each of the fifteen agreements' because Mr. Holder has not made fifteen separate requests for all 15 sewer agreements the County alleges it has in its custody." Amended Complaint ¶19

D. Neither party appealed the final order of the PIACB in opinion 23-33. The controversy now is. *inter alia*. whether or not the revised fee of $758.16 is "reasonable" in light of the fact that Plaintiff has retargeted his request to just the Maugansville sewer agreement, and not all fifteen subdistricts as the $758.16 fee reflects.

E. Plaintiff also made a request to Defendants to inspect records described as "[a]ll Invoices for legal work performed for...(the "County") by Karpinski, Cornbrooks & Karp, P.A....and/or any other Attorney or Law Firm received by the County from date range January 1st 2020 until May 14th 2023." Ex. B - 1061-01-24 - Final Determination (Amended), attached hereto. "The dispute presented for mediation was 'whether or not the County's denial of a fee waiver is justified'." *Id.* p. 1. "The dispute presented for mediation is **unresolved**." *Id.* p. 2.

F. Plaintiff intends to file a Second Amended Complaint, to "(2) set forth a better statement of facts concerning any matter already raised in a pleading, [and] (3) set forth transactions or events that have occurred since the filing of the pleading sought to be amended," Rule 2-341(c).

Respectfully submitted,

Justin K. Holder, *Pro Se*
308 West Chapline Street
Sharpsburg, Maryland 21782
(240) 356-2001

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of April, 2023, the foregoing Lin was served via MDEC and thus served electronically upon all counsel/parties of record, severed via US Mail to all other counsel/parties requiring service not served by MDEC;

MDEC:

KEVIN KARPINSKI, #11849, CPF #9312150114
120 East Baltimore Street, Suite 1850
Baltimore, Maryland 21202–1617 - (410) 727-5000

Attorney for Defendant(s) Board of County Commissioners of Washington County; and Kirk C. Downey, Esq.

Justin K. Holder, *Pro Se*

E-FILED; Washington Circuit Court
Docket: 4/24/2024 6:23 PM; Submission: 4/24/2024 6:23 PM
Envelope: 16215245

WES MOORE
GOVERNOR

ARUNA MILLER
LT. GOVERNOR

MICHELE L. COHEN, ESQ.
SAMUEL G. ENCARNACION
DEBRA LYNN GARDNER
NIVEK M. JOHNSON
DEBORAH MOORE-CARTER

STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 23-33
October 5, 2023
Washington County, Custodian
Justin Holder, Complainant

The complainant, Justin Holder, challenges the $7,602.95 estimated fee that Washington County ("County") has charged for responding to his Public Information Act ("PIA") request for sewer and water system related agreements between the County and fifteen different subdistricts. In response, the County argues that we should dismiss the complaint as premature or, in the alternative, find that the estimated fee is reasonable. As explained below, we conclude that the County's estimated fee is unreasonable and order that it be reduced to $758.16.

Background

In March 2023, the complainant sent a PIA request to the County seeking "the 'agreements' to operate, construct and maintain a sewer/water system" that were made between the County and fifteen sanitary subdistricts and "signed and sealed on or before December 31, 1993." The County, through counsel, acknowledged the request and provided an estimated fee of $7,602.95 for production of the records. The County explained that the records were stored in boxes labeled for each subdistrict, and that it anticipated that it would take two County employees, paid at a combined hourly rate of $104.15, two and a half hours each to search through the boxes for each of the fifteen subdistricts to locate responsive records. The County further explained that the first two hours of search time were free,[1] and that that estimate did not include fees for any legal review that might be required. The County asked the complainant to pay a "deposit" in the amount of the total estimated fee—i.e., $7,602.95.[2]

[1] "The official custodian may not charge a fee for the first 2 hours that are needed to search for a public record and prepare it for inspection." Md. Code Ann., Gen. Provisions § 4-206(c).

[2] The County's math appears to be wrong here. To arrive at the $7,602.95 estimated fee, the County multiplied $104.15 per hour by five hours to arrive at an estimate of $520.75 per each of the fifteen boxes. But, given that the County is using a "combined hourly rate," it should have multiplied that rate by two and half hours—or, in the alternative, simply added together the product of each individual's salary multiplied by two and half hours of work. Thus, the estimated fee was essentially erroneously doubled, and should have been $3,697.33.

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Telephone for Deaf (410) 576-6372

After receiving the County's estimated fee, the complainant requested a fee waiver. The complainant also advised that he was "very familiar" with the way the records were kept in the boxes for each subdistrict, and that he believed that he would be able to search the records himself in much less time. Accordingly, the complainant requested that the County allow him to inspect the records in person and scan the responsive agreements with his phone.

The County denied the complainant's fee waiver request. Regarding the complainant's request to inspect and scan the records in person, the County maintained that it would still be necessary to charge the fee. This was so, the County explained, because an employee would need to "pre-scan" the boxes to remove or redact any privileged or exempt material, and because an employee would have to be present to "monitor" the complainant while he inspected the records. The County asked the complainant to pay "a portion of the deposit previously requested."

The complainant, in further correspondence with the County, contended that it would not take him longer than two hours to search through the subdistrict boxes. Noting that on a prior occasion he had searched through a different subdistrict's boxed records, the complainant explained that he knew "how the files in the 15 boxes will be kept," and that the section he was interested in was "relatively small (4 or 5 files)." The complainant also disputed the County's assertion that there might be privileged or confidential information in any of the responsive agreements.

The correspondence continued. In a third letter, the County stated again that it would need to "pre-screen" the boxes to make sure that any privileged or exempt information was removed prior to the complainant's inspection. The County also reiterated that a County employee would need to monitor the complainant during the inspection process, as was done when the complainant previously inspected the records for a different subdistrict. The County also advised that it was able to locate a copy of the agreement for one of the subdistricts—Cloverton—in "another file maintained by the County which was more readily accessible when compared to the fifteen boxes of sewer agreements." Thus, in light of the fact that the box for the Cloverton subdistrict would not need to be searched, the estimated fee was reduced to $7,082.20. The County asked the complainant to advise if he "intend[ed] to submit a deposit and to proceed with [his] request."

The complainant responded to the County's third letter that same day, stating that he was "100% certain" that he could search the fifteen boxes and find the responsive agreements in one hour or less. He also asked the County to advise which County employee would be "assigned to supervise [his] search at the rate of $150/hour." The County sent a fourth and final letter in response in which it directed the complainant to its previous letters and advised that, once the complainant paid the deposit, the County would begin to "pre-screen the records in anticipation of [his] search."

At this point, the complainant contacted the Ombudsman to assist in resolving the fee dispute. Ultimately, however, the Ombudsman issued a final determination stating that the dispute was not resolved and the complainant filed this complaint in which he continues to challenge the County's fee as excessive. The County responds first by asking that we dismiss the complaint as premature, and second by asserting that the estimated fees it has charged are reasonable. In reply, the complainant urges us to review the fee. He argues that the County's application of a "combined" hourly rate to the total number of hours the County believes it will take to search each box is erroneous, and that the actual estimated fee should total less than $4,000. He also questions whether it is reasonable to anticipate that it will take five hours to search each box for the specific records he seeks in his PIA request. Finally, the complainant suggests that we have authority to review the County's fee waiver denial.

Analysis

The PIA authorizes us to review and resolve complaints that allege certain violations of its provisions, including that a custodian "charged an unreasonable fee under § 4-206 of [the PIA] of more than $350." § 4-1A-04(a)(1)(ii).[3] Before a complaint may be filed, a complainant must attempt to resolve a dispute through the Public Access Ombudsman and receive a final determination that the dispute was not resolved. § 4-1A-05(a). Once a complaint is properly filed, we must determine whether the alleged violation of the PIA has occurred and issue a written decision. § 4-1A-04(a)(2). In making this determination, we consider the complaint, the response, and any other relevant information before us. *See, e.g.*, 4-1A-06(b)(2) (allowing the Board to request additional information including information about "the basis for the fee that was charged"). If we find a violation, we must order the remedy provided by the PIA. *See, e.g.*, § 4-1A-04(a)(3)(ii) ("[I]f the Board finds that the custodian charged an unreasonable fee," the Board must order the custodian to "reduce the fee to an amount determined by the Board to be reasonable and refund the difference.").

Ordinarily, a custodian must permit inspection of public records with the "least cost and least delay." § 4-103(b). However, when the amount of labor required to respond to a PIA request exceeds two hours, § 4-206(c), the PIA allows a custodian to charge a reasonable fee for "the search for, preparation of, and reproduction of" the responsive records, including "staff and attorney review costs," if attorney review is necessary, § 4-206(b).[4] To be "reasonable," a fee must bear a "reasonable relationship to the recovery of actual costs incurred by a governmental unit." § 4-206(a)(3). The fee for any staff or

[3] Statutory citations are to the General Provisions Article of Maryland's Annotated Code, unless otherwise indicated.

[4] A custodian may charge the actual cost of reproduction—e.g., the cost of photocopies or USB drives—regardless of how long it took to prepare the response.

attorney time must be prorated for "each individual's salary"—not including benefits or other incidental costs, PIACB 22-06, at 5 (Jan. 18, 2022)—and the "actual time attributable to the search for and preparation of a public record," § 4-206(b)(2). While the PIA does not expressly authorize it, the Supreme Court of Maryland has suggested that a custodian may properly "require pre-payment of fees or a commitment to pay fees when the cost of processing a PIA request is likely to be substantial." *Glass v. Anne Arundel County*, 453 Md. 201, 212-13 (2017).

Turning to the estimated fees challenged in this complaint, we start with the County's argument that the complaint is premature and thus warrants dismissal. We disagree. We are empowered to review allegations that a custodian has "charged" an unreasonable fee higher than $350. § 4-1A-04(a)(1)(ii). As we have explained somewhat recently, the operative word there is "charged"; it does not matter whether the fee represents an actual fee for work already performed or an estimated fee for work anticipated. *See* PIACB 22-07, at 4-5 (Feb. 3, 2022). The County seems to suggest that because it asked that the complainant submit a "deposit" that did not include fees for legal review, that it somehow had not "charged" him a concrete fee for responding to his PIA request. We see absolutely no distinction there. What matters is that the County demanded that the complainant pay, in its words, a "deposit" of $7,602.95 (later reduced to $7,082.20) or else the County would not produce the responsive records. And, as the County itself explains, it "provided a detailed breakdown" of the estimated costs that that "deposit" represents—i.e., the amount of search time anticipated and the hourly rate at which that search time would be charged. These are the very costs that § 4-206 permits. In our view, the County has clearly "charged . . . [a] fee under § 4-206." § 4-1A-04(a)(1)(ii).

The only question before us then, is whether that fee is reasonable. We think it is not. First, as explained *supra*, note 2, the County's method of calculating the estimated fee for search time grossly inflated that number. The County explained that it would need two employees to spend two and a half hours each searching through the fourteen boxes of records.[5] The County combined the hourly rates of those employees *and* the total amount of time that they would spend searching the boxes to arrive at the $7,082.20 estimated fee set out in its May 23, 2023, letter. More specifically, the County multiplied the $104.15 "combined hourly rate" by five hours of search time per box to arrive at a per-box estimate of $520.75. It then multiplied that per-box estimated fee by fourteen boxes, and subtracted $208.30 to account for the two hours of free labor that the PIA provides. Given that the combined hourly rate represents the pay of the two employees, the County should have multiplied that hourly rate by two and half hours, not five.[6] Otherwise, the fee represents

[5] Per the County's May 23, 2023, letter, we understand that one responsive agreement out of fifteen has been produced, and thus there are fourteen boxes—one for each subdistrict—left to search for the remaining responsive agreements.

[6] As noted in more detail below, we asked the County to provide more information about the basis for the fee charged. *See* § 4-1A-06(b)(2)(iii). In response to our questions about the County's

the work of five hours per box for each employee, not two and a half. Thus, assuming no other issues, the estimated fee should be $3,436.95.

But, there are other issues. First, because the submissions left some questions unanswered, we asked the County to provide more information about the basis for the fee, § 4-1A-06(b)(2)(iii), including the job titles and annual salaries of the employees assigned to the response, an estimate as to how many records each of the fifteen boxes holds, and an explanation as to how those boxes are organized. We also asked the County to explain why it was necessary to assign such highly paid employees to perform the search. In response, the County advised that the Director of the Division of Environmental Management ("Division Director"), who earns $147,260 annually, and an Allocation/Permits Specialist ("Permits Specialist") earning $60,655 annually would search the boxes for the responsive agreements. Regarding the volume of records and their organization, the County indicated that the boxes are "standard [B]anker[s] [B]oxes" with the subdistrict number written on them, and that the contents of the box are unknown unless opened. The County explains that the boxes may contain, e.g., construction files or financial files.[7] As to why highly paid employees are necessary, the County states that the Division Director's "insight" is needed to "assist" the Permits Specialist in "determining what is disclosable and what is not under the guidelines of the PIA."

With this additional information, we have concerns about the reasonableness of the County's estimated fee. To start—and with emphasis on the PIA's provision that records should be produced with "the least cost and least delay," § 4-103(b)—we think it is inappropriate to assign the Division Director, who is compensated at an hourly rate of $70.80, to perform half of the search when his stated role is to provide "insight" as to whether the responsive agreements are disclosable. Rather, the Permits Specialist—whom the County clearly believes is competent and capable of searching for the agreements—should do the bulk of the work and seek the Division Director's "insight" once those agreements have been located. *See* PIACB 21-16, at 6 (July 30, 2021) (explaining that, although not a hard-and-fast rule, generally "an agency should utilize the lowest-paid employee available and capable of producing the response"); *cf., e.g.*, PIACB 21-12, at 6-

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apparent calculation error, the County simply responded that the complainant "will be charged the actual time each employee spends searching the records." While we are glad to know that the County intends to comply with § 4-206(b), this response does not resolve the problem with the County's calculation of the "deposit" it demanded that the complainant pay.

[7] Based on the County's response here, it is less clear to us whether the files for each subdistrict are contained wholly within one box, or whether there are multiple boxes for each subdistrict. In its response to the complaint, however, the County indicates that "any potentially responsive records are contained within fifteen boxes labeled by reference to the names of [the subdistrict] projects." We thus operate under the assumption that there is one box for each subdistrict—for a total of fourteen boxes to search, *see supra*, note 5—and that each box may contain certain records grouped together, e.g., construction or financial files.

7 (May 27, 2021) (finding that staff paid $25 per hour, and not an attorney compensated at $325 per hour, should have been tasked with reviewing and sorting out duplicative and non-responsive records). As we see it, the Permits Specialist's hourly rate of $29.16 is a more appropriate one to use, particularly for purposes of calculating the "deposit" that the County requires the complainant to pay.

We also take issue with the County's time estimate, which should track the amount of time that the County anticipates it will actually take to respond to the PIA request. *See* § 4-206(b)(2) (staff costs must be based on "actual time attributable to the search"). While we are mindful that we are usually not in a position to micromanage or second-guess a custodian's search and retrieval process, here we have some serious concerns about the County's estimation that it will take a total of five hours to search one Bankers Box for the responsive water and sewer agreement. The nature of the responsive records is relevant to whether that time estimate—and, ultimately, the estimated fee—is reasonable. *See, e.g.*, PIACB 22-06, at 7-8 (Jan. 18, 2022) (noting that the fact that a requester was "not seeking the actual records from the files themselves," but rather only the "name of the officer that is the subject of the file" was important). The complainant has not requested all records related to the subdistrict water and sewer projects—or even many of those records. Rather, he has requested only the agreements between the County and the subdistrict related to each water and sewer project. Agreements that, according to the complainant's prior experience searching a similar box, may be contained within one of four or five files. Thus, it seems that most of the records in the boxes need not be scrutinized. No disclosure determinations need to be made for any records that are not the agreements themselves.[8] And, assuming that the agreements are not at the very back of the box, once an agreement is found, presumably the rest of the box need not be searched.

This brings us to the more difficult question. Though it may be easy to say that the County's five-hour per-box time estimate appears somewhat excessive, it is not as easy to determine what a more reasonable time estimate might be. However, we bear in mind that this is an estimated fee, properly charged "when the cost of processing a PIA request is likely to be substantial," *Glass*, 453 Md. at 212-13, and that the County will be able to charge the complainant for any actual costs—including the Division Director's review of the responsive agreements—that exceed the "deposit" he has paid, § 4-206(b). Thus, in

[8] As indicated above, the complainant asserted that he is "very familiar" with the records related to these subdistrict water and sewer projects and suggested that it might reduce the cost if he were to search through the boxes himself. Such method may not be as economical as the complainant believes, given that, in this scenario, where the complainant has access to *all* of the records, the County may well need to screen out records that are exempt from inspection under the PIA. It is telling, however, that the County's time estimate did not appear to change as between the two methods, even though an in-person inspection arguably might require closer scrutiny of the non-agreement records. This causes us to further question whether the County's five-hour per-box time estimate is reasonable.

light of the nature and volume of the records requested, and given the PIA's purpose to promote access to public records, we think it is reasonable at this stage to anticipate that it will take a Permits Specialist an average of two hours—at the most—to search each box for the responsive agreements. Charged at a rate of $29.16 per hour, and accounting for the two hours of free labor the PIA requires, § 4-206(c), that time estimate results in an estimated fee of $758.16.

We turn briefly to the complainant's contention that we may review the County's denial of his request for a fee waiver. The section of the PIA to which the complainant cites—§ 4-1A-04(a)(3)(iii)—details the remedies related to a custodian's failure to respond to a PIA request within certain time limitations. Under those circumstances, § 4-1A-04(a)(3)(iii)(2) gives us discretion to order a custodian to waive all or part of the fee associated with responding to the request, so long as our written decision includes our reasons for doing so. Thus, our ability to order a fee waiver is tied to a very narrow set of circumstances—i.e., the custodian must have wholly failed to respond to a PIA request in the first place, with the Ombudsman unable to resolve the lack of response. *See, e.g.*, PIACB 24-07 (Sept. 6, 2023). Here, the County responded to the complainant's PIA request—the disputed issue is the fee. Thus, § 4-1A-04(a)(3)(iii) is not implicated. We simply lack authority to review the County's fee waiver denial. *See* PIACB 23-05, at 4 n.5 (Nov. 23, 2022).

Finally, we note some broader observations based on the submissions for this complaint. Our State's Supreme Court has on several occasions explained that it is important for PIA requesters and custodians to work together in good faith in order to "approximate[] the purpose and policy of the PIA." *Glass*, 453 Md. at 233. "[I]f initial collaborative efforts between an applicant and a custodian" are not successful then, as we note above, "the parties may attempt to resolve their dispute with the assistance of the Ombudsman." *Baltimore Police Dep't v. Open Just. Baltimore*, —Md.— (2023), 2023 WL 5616318, at *6. At the end of the day, "[t]he MPIA depends upon collaboration." *Id.* at *5. Here it seems that the complainant's suggestions as to how he might reduce the burden on the County (and also the cost) were met with no genuine collaborative efforts on the County's part. Going forward, the County should work with the complainant in good faith to respond to his PIA request "with the least cost and least delay." § 4-103(b).

Conclusion

Based on the submissions, including the additional information about the basis for the fee provided by the County, we conclude that the "deposit"—i.e., the estimated fee—that the County has asked the complainant to prepay—i.e., "charged"—is unreasonable and direct the County to reduce that "deposit" to $758.16. Once the work is complete, and should the actual costs of responding to the complainant's PIA request exceed the deposit paid, the County may charge the complainant for that overage. Of course, if the actual cost is less than the deposit, the County must refund the complainant the difference. To ensure

an accurate accounting of the costs detailed in § 4-206(b), the County should carefully track the amount of time each individual employee spends working on the response.

Public Information Act Compliance Board

Michele L. Cohen, Esq.
Samuel G. Encarnacion
Debra Lynn Gardner
Nivek M. Johnson
Deborah Moore-Carter

E-FILED; Washington Circuit Court
Docket: 4/24/2024 6:23 PM; Submission: 4/24/2024 6:23 PM
Envelope: 16215245

WES MOORE
Governor

ARUNA MILLER
Lt. Governor

STATE OF MARYLAND
OFFICE OF THE
PUBLIC ACCESS OMBUDSMAN

LISA A. KERSHNER
Public Access Ombudsman

MEDIATION DISPUTE RESOLUTION FINAL DETERMINATION

REQUESTER: JUSTIN HOLDER
CUSTODIAN: WASHINGTON COUNTY GOVERNMENT
FILE NUMBER: 1061-01-24

FEBRUARY 12, 2024
AMENDED MARCH 13, 2024

Relevant Background of Dispute

On May 14, 2023, the requester, Mr. Justin Holder, submitted the following Maryland Public Information Act ("PIA") request to the Washington County Government ("County") for the following records: "All Invoices for legal work performed for the Board of County Commissioners, Washington County Attorneys, or Washington County Government (the "County") by Karpinski, Cornbrooks & Karp, P.A.; Daniel Karp, Esq.; Michael B. Rynd, Esq.; Kevin Bock Karpinski, Esq.; Ernest I. Cornbrooks, IV, Esq.; Dan Scapardine, Esq.; Jason Parkins, Esq.; Olivia Carrara, Esq. and/or any other Attorney or Law Firm received by the County from date range January 1st 2020 until May 14th 2023." The requester also sought a waiver of any fees associated with fulfilling his request. The County through counsel responded on May 26, 2023, providing Mr. Holder with a fee estimate of at least $500 to fulfill the request, and asking for prepayment in-full before processing would continue.

Request for Mediation & Dispute Presented

The County contacted the Public Access Ombudsman on November 1, 2023, to request mediation. A file was opened with the Office on November 13, 2023. The dispute presented for mediation was "whether or not the County's denial of a fee waiver is justified".

Outcome of Mediation

The dispute presented for mediation is **unresolved**.

Notice of PIA Compliance Board Complaint Procedures

For certain disputes that are **unresolved** or only **partially resolved** following mediation with the Ombudsman, a requester or custodian has the right to file a complaint with the PIA Compliance Board ("PIACB"). Such disputes include disputes about:

- Denial of inspection of a public record;
- Charging unreasonable fees higher than $350;
- A failure to respond to a request for a public record within certain statutory time limits; and
- Frivolous, vexatious, or bad faith requests.

A complaint must be filed within 30 days of receipt of the final determination issued by the Office of the Public Access Ombudsman following mediation of the dispute. Please note: the Ombudsman does not file complaints with the PIACB. For more information about the Board's procedures, please see the Board's regulations, COMAR Title 14, Subtitle 02. A complaint can be filed by email to the Board's dedicated inbox at piaopengov@oag.state.md.us or by mail at:

Public Information Act Compliance Board
c/o Office of the Attorney General
200 St. Paul Place
Baltimore, Maryland 21202

For more information about the Board, including a link to a form complaint, please visit https://www.marylandattorneygeneral.gov/Pages/OpenGov/piacb.aspx.

Submitted by: Lisa A. Kershner, Public Access Ombudsman

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E-FILED; Washington Circuit Court
Docket: 6/3/2024 3:08 PM; Submission: 6/3/2024 3:08 PM
Envelope: 16690239

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

IN THE MATTER OF	*	
		CASE NO. C-21-CV-23-16
JUSTIN HOLDER	*	
	*	

* * * * * * * * * *

ORDER

This matter comes before the court on Defendants, Washington County Board of County Commissioners, et al., Motion to Dismiss Amended Complaint, or in the Alternative, Motion for Summary Judgment and for Sanctions. Both sides thoroughly briefed and argued the issues at hand before the court on September 6, 2023. The court having considered all filings, including Plaintiffs Supplemental Evidence, and arguments, it is hereby this 3rd of June, 2024, by the Circuit Court of Washington County,

ORDERED, that the Defendants Motion to Dismiss Amended Complaint, or in the Alternative, Motion for Summary Judgment and for Sanctions, is Granted in part and Denied in part, and it is further

ORDERED, that this Court having found that Defendant did comply by way of response or lawful exception, Judgment is entered in favored of Defendant as a matter of law, and it is further

ORDERED, that Defendants' request for sanctions is Denied.

Brett R. Wilson
Judge

Entered: Clerk, Circuit Court for
Washington County, MD
June 3, 2024

IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

JUSTIN HOLDER	*	
	*	
Plaintiff	*	
v.	*	CASE NO.: C-21-CV-23-000016
	*	
BOARD OF COUNTY COMMR'S OF WASHINGTON COUNTY, *et al.*	*	
	*	
	*	
	*	
Defendant(s)	*	

* *

NOTICE OF APPEAL

COMES NOW Plaintiff, Justin Kyle Holder, in proper person, and files this Plaintiff's Notice of Appeal to the Appellate Court of Maryland, in accordance with MD Rule(s) 8-202; MD. Courts and Judicial Proceedings Code Ann.§§ 12-301 & 12-303; and hereby appeals this courts June 3, 2024 final judgement; and in accordance of Md. Rule 8-411 does notify the clerk of the lower court that on June 26, 2024 the court reporter has been caused to file a certified copy of the September 6, 2023 hearing transcript into the record of this case. The Civil Information Report to the Appellate Court of Maryland is attached hereto as Ex. A, and incorporated herein by reference.

Respectfully submitted,

_____

Justin K. Holder, *Pro Se*
308 West Chapline Street
Sharpsburg, Maryland 21782
(240) 356-2001

E. 332

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of June, 2024, the foregoing Notice of Appeal was served via MDEC and thus served electronically upon all counsel/parties of record, severed via US Mail to all other counsel/parties requiring service not served by MDEC;

MDEC:

KEVIN KARPINSKI, #11849, CPF #9312150114
120 East Baltimore Street, Suite 1850
Baltimore, Maryland 21202–1617 - (410) 727-5000

Attorney for Defendant(s) Board of County Commissioners of Washington County; and Kirk C. Downey, Esq.

_____

Justin K. Holder, *Pro Se*